

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Sep 21 2022

SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions

The Honorable Steven H. John, Circuit Court Judge

Appellate Case No. 2021-001241

The State,

Respondent,

v.

Devin Lavar Outen,

Appellant.

AMENDED RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry
 STATE VS.
Devin Lavar Outen

INDICTMENT/CASE#: 2018GS2606393A/W#: 2018DI2600517Date of Offense: 7/6/2018S.C. Code § : 16-11-0311CDR Code #: 0079

AKA:

Race: BLACK Sex: M Age: 36DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF (15-Life) or ☐ PLEADSTO: Attempt / Attempt, Common Law, Punish as to principal offense (Burglary 1st)in violation of § 16-01-0080 of the S.C. Code of Laws, bearing CDR Code # 1151
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

SCB16182

SCB08386

DeBusk, Jr., George H.

SC Bar#

Defendant

Galtmore, James Cullen
Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 20 years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
 which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: ☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-23-20 or 16-25-55 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:	\$	
§14-1-206 (Assessments 107.5 %)	\$	
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$ 25.00
Proviso (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 3.75

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

Renee Elvis
Julie Kevish

SCCA/217 (04/2018)

Record on Appeal 0002

Presiding Judge

Judge Code:

Sentence Date:

12/11/2019
2/6/2020

SENTENCE SHEET

FILED
 OCT 13 4:47
 Horry County
 Clerk of Court
 Renee N. Elvis

Obtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive monthly
 pmts. of \$ 25.00 beginning 11/15/2019\$ paid to Public Defender FundOther:

☐ Appointed PD or appointed other counsel,
 Proviso requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2018-GS-26-06393 AND 06394

STATE OF SOUTH CAROLINA,)

Plaintiff,)

vs.)

DEVIN LAVAR OUTEN,)

Defendant.)

Transcript of Record

(Day 1 of 2)

February 5, 2020

B E F O R E:

Honorable Steven H. John
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

George H. DeBusk, Jr., Esquire
Attorney for State of South Carolina

James C. Galmore, III, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

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1 **FEBRUARY 5, 2020 - 9:56 A.M.**

2 (REPORTER'S NOTE: Jury Venire present in courtroom.)

3 VOIR DIRE:

4 THE COURT: Thank you. Counsel, could y'all come up and
5 talk to me for one second, please?

6 (REPORTER'S NOTE: Bench conference is held off the record in
7 the presence of but outside the hearing of the jury.)

8 THE COURT: All right, ladies and gentlemen, we are going
9 to start the case of The State of South Carolina versus Devin
10 Lavar Outen. Now, the state has charged the defendant with
11 the crime of attempted burglary in the first degree. Now, I'm
12 gonna read to you certain information contained in the
13 indictment, but before I do that, I'm gonna tell you, the
14 indictment is the charging document which brings the matter to
15 court. It is not evidence and cannot be considered by anyone
16 as evidence in the case. It is how the matter starts. And to
17 this indictment, to this charge by the State of South
18 Carolina, the defendant has pled not guilty. So, the state is
19 charging that Devin Lavar Outen did in Horry County, on or
20 about July 6, 2018, willfully and unlawfully attempt to enter
21 the dwelling of Phyllis Grice located at 2295 Green Leaf Drive
22 in Conway, South Carolina in Horry County, without consent and
23 with the intent to commit a crime therein, and the defendant
24 attempted to enter or remain during the nighttime, all being
25 in violation of the Code of Laws, State of South Carolina,

1 1976, as amended.

2 Is there any member of the jury panel that knows anything
3 about this particular case, has any information about this
4 particular case that they need to give to the Court at this
5 time?

6 (REPORTER'S NOTE: No response.)

7 THE COURT: Very good. And since I did not have the
8 pleasure of qualifying you, just so that you know, I'm Steven
9 John, the resident judge of this circuit, Fifteenth Circuit,
10 Horry and Georgetown Counties, but I was delayed in Lexington
11 County for a trial that took all of last week and the first
12 two days of this week. That won't be the case in this one; so
13 don't be worried about that. That was a particularly long
14 case, but this one will not be such. All right?

15 All right. So, with that, the potential or possible
16 witnesses in this matter are as follows and these individuals
17 are with the Horry County Police Department: Julie Barnes;
18 Fred Rash; J. Brantley; Dennis Lewis; I'm just going to have
19 to spell this one, Casey G-U-S-K-I-E-W-I-C-Z. Again, all
20 those individuals with the Horry County Police Department.
21 Phyllis Grice, 911 Administrator or keeper of the records;
22 Devin Lavar Outen.

23 Any member of the jury panel that's related by blood or
24 marriage, close personal friends, acquaintances of, knows of
25 any of these possible or potential witnesses? If so, please

1 stand.

2 (REPORTER'S NOTE: No response.)

3 THE COURT: Is there any member of the jury panel, either
4 you yourself or a member of your immediate family, has ever
5 had any matters handled, worked on, touched in any way by the
6 Fifteenth Circuit Solicitor's Office, that's the prosecuting
7 office that covers Horry and Georgetown Counties? If so,
8 please stand.

9 (REPORTER'S NOTE: No response.)

10 THE COURT: Any member of the jury panel that's related
11 by blood or marriage, close personal friends, acquaintances of
12 anybody employed at the Fifteenth Circuit Solicitor's Office
13 in Horry or Georgetown County?

14 (REPORTER'S NOTE: No response.)

15 THE COURT: Is there any member of the jury panel who has
16 had any matter, either you yourself or a member of your
17 immediate family, a matter worked on, touched, handled in any
18 way by the Fifteenth Circuit Public Defender's Office? If so,
19 please stand.

20 (REPORTER'S NOTE: No response.)

21 THE COURT: Any member of the jury panel related by blood
22 or marriage, close personal friends, acquaintances of anybody
23 employed at the Public Defender's Office either in Horry
24 County or Georgetown County? If so, please stand.

25 (REPORTER'S NOTE: No response.)

1 THE COURT: All right. For the state, Solicitor, if you
2 would stand up and identify yourself, please, sir.

3 MR. DEBUSK: My name is George DeBusk. I'm a Senior
4 Assistant Solicitor.

5 THE COURT: And for the defense?

6 MR. GALMORE: My name is James Galmore. I work at the
7 Fifteenth Circuit Public Defender's Office.

8 THE COURT: Thank y'all. Any member of the jury panel
9 that's related by blood or marriage, close personal friends,
10 acquaintances of these gentlemen that have stood up and
11 identified themselves to you? If so, please stand.

12 (REPORTER'S NOTE: No response.)

13 THE COURT: Very good. Any member of the jury panel, do
14 you believe that any of you have any kind of personal,
15 political, religious, philosophical belief that you believe
16 that would prevent you from being a fair and impartial juror
17 in this particular matter? If so, please stand.

18 (REPORTER'S NOTE: No response.)

19 THE COURT: Is there any member of the jury panel, either
20 you yourself or a member of your immediate family ever been in
21 law enforcement? So, for yourself, you're a former law
22 enforcement officer or family member who is currently in law
23 enforcement or was in the past in law enforcement? If so,
24 please stand.

25 All right. Right here. Sir, your name and juror number

1 please?

2 JUROR 187: Fain Johnson, 187.

3 THE COURT: And was it yourself or a family member?

4 JUROR 187: My stepfather was in law enforcement
5 for 30 years right here in Horry County.

6 THE COURT: In Horry County, for the Sheriff's Office or
7 the ---

8 JUROR 187: Sheriff's Department; yes, sir.

9 THE COURT: All right. Very good. Can you give to the
10 State of South Carolina and to the defendant a fair and
11 impartial trial; can you be a fair and impartial juror in this
12 case?

13 JUROR 187: Yes, sir.

14 THE COURT: Thank you very much.

15 All right. Yes, ma'am, your name and juror number,
16 please?

17 JUROR 27: Sandra Bergstrom, 27. I was a police
18 dispatcher and 911 operator for 10 years in Massachusetts.

19 THE COURT: All right. Can you give to the State of
20 South Carolina and to the defendant a fair and impartial
21 trial; can you be a fair and impartial juror in this case?

22 JUROR 27: Yes.

23 THE COURT: All right. Thank you very much, ma'am.
24 Yes, ma'am; your name and juror number, please?

25 JUROR 296: Shelley Rizzo, 296. My husband is a retired

1 police officer from New Jersey.

2 THE COURT: All right, ma'am. Can you give to the State
3 of South Carolina and to the defendant a fair and impartial
4 trial; can you be a fair and impartial juror in this case?

5 JUROR 296: Yes, sir.

6 THE COURT: Thank you very much, ma'am.

7 Yes, ma'am, your name and juror number, please?

8 JUROR 181: Mary Jackson.

9 THE COURT: Oh, I'm sorry.

10 JUROR 181: I'm sorry.

11 THE COURT: That's fine. That's -- I was sort of
12 pointing that way, but it doesn't matter, we'll get to both of
13 you. Go ahead, somebody.

14 JUROR 181: Mary Jackson, 181. My first husband and my
15 father were both in law enforcement in Michigan.

16 THE COURT: Michigan. All right, ma'am. Can you give to
17 the State of South Carolina and to the defendant a fair and
18 impartial trial; can you be a fair and impartial juror in this
19 case?

20 JUROR 181: Yes.

21 THE COURT: Thank you very much, ma'am.

22 All right. Yes, ma'am?

23 JUROR 18: Ramona Baskin, Juror Number 18. My husband
24 retired Myrtle Beach Police Department Detention Officer.

25 THE COURT: All right, ma'am. Can you give to the State

1 of South Carolina and to the defendant a fair and impartial
2 trial; can you be a fair and impartial juror in this case?

3 JUROR 18: Yes, sir.

4 THE COURT: Thank you very much.

5 All right. Is there any member of the jury panel either
6 you yourself or member of your immediate family ever been a
7 member of or involved in any kind of law enforcement
8 organization or a victim's rights organization? Let me just
9 give you a couple of examples of those types of activities:
10 Citizens Against Violent Crime; Mothers Against Drunk Driving;
11 the South Carolina Sheriff's Association; South Carolina
12 Trooper's Association; just some kind of law enforcement
13 support organization or victim's rights organization? If so,
14 please stand.

15 Very good. Is there -- now, this next question, ladies
16 and gentlemen, I'm going to ask whether you yourself or a
17 member of your immediate family has ever been the victim of a
18 crime. Now, I am not going to ask you what occurred. I do
19 not want you to volunteer any information to me about what
20 occurred. The question will be straightforward, yourself,
21 family member or both, and then I'll ask the qualification
22 question. So, is there any member of the jury panel, either
23 you yourself or member of your immediate family ever been the
24 victim of a crime? If so, please stand.

25 All right. Yes, ma'am, your name and juror number,

1 please?

2 JUROR 279: Elizabeth Phillips, Juror 279.

3 THE COURT: And yourself or a family member?

4 JUROR 279: Self.

5 THE COURT: Can you give to the State of South Carolina
6 and to the defendant a fair and impartial trial; can you be a
7 fair and impartial juror in this case?

8 JUROR 279: Yes, sir; I can.

9 THE COURT: Thank you very much, ma'am.
10 Yes, ma'am?

11 JUROR 151: Rochelle Hammond, 151.

12 THE COURT: All right. And was it yourself or a family
13 member?

14 JUROR 151: Myself.

15 THE COURT: Can you give to the State of South Carolina
16 and to the defendant a fair and impartial trial; can you be a
17 fair and impartial juror in this case?

18 JUROR 151: Being honest, sir ---

19 THE COURT: Don't tell me then. Come on up here and talk
20 to me.

21 JUROR 151: Yes, sir.

22 THE COURT: All right. Don't say it out loud. Come on
23 up.

24 Counsel?

25 (REPORTER'S NOTE: Bench conference is held on the record in

1 the presence of but outside the hearing of the jury.)

2 THE COURT: All right. Yes, ma'am. Go ahead.

3 JUROR 151: I'm being honest, sir. It was for the same
4 charges.

5 THE COURT: Okay. So, what -- your case was basically
6 the same thing?

7 JUROR 151: Yes, sir.

8 THE COURT: All right. All right. Well, I'm just gonna
9 set you aside from this particular case. You don't have to
10 answer any more questions. Okay?

11 JUROR 151: Yes, sir.

12 THE COURT: All right. Thank you, ma'am.
13 Ma'am, what was your juror number again?

14 JUROR 151: 151.

15 THE COURT: 151. Thank you, ma'am.

16 JUROR 151: Yes, sir.

17 (REPORTER'S NOTE: End of bench conference.)

18 THE COURT: All right. Yes, ma'am, your name and juror
19 number, please?

20 JUROR 389: Patricia Whitner, 389.

21 THE COURT: And yourself or a family member?

22 JUROR 389: Self.

23 THE COURT: Can you give to the State of South Carolina
24 and to the defendant a fair and impartial trial; can you be a
25 fair and impartial juror in this case?

1 JUROR 389: Yes, sir.

2 THE COURT: Thank you very much.

3 All right. Yes, sir?

4 JUROR 15: Marc Barbour, Juror Number 15.

5 THE COURT: Yourself or a family member?

6 JUROR 15: Self.

7 THE COURT: All right, sir. Can you give to the State of
8 South Carolina and to the defendant a fair and impartial
9 trial; can you be a fair and impartial juror in this case?

10 JUROR 15: Yes, sir.

11 THE COURT: Thank you very much.

12 All right. I'm gonna ask you, ladies and gentlemen, what
13 I classify as my general or catchall question. Do you know of
14 any reason, have any question in your mind, any doubt in your
15 mind that you believe you cannot give to the State of South
16 Carolina and to the defendant a fair and impartial trial, for
17 any reason whatsoever? If so, please stand.

18 (REPORTER'S NOTE: No response.)

19 THE COURT: Thank you very much.

20 Further questions from the state?

21 MR. DEBUSK: None, Your Honor.

22 THE COURT: Further questions from the defense?

23 MR. GALMORE: No, sir.

24 JURY SELECTION:

25 THE COURT: All right. Very good. All right, ladies and

1 gentlemen, the process is gonna be as follows. Your names
2 have been put in a random order not by, you know, by alphabet
3 or number or anything like that, just in a random order. The
4 clerk's representative is gonna call a name. If and when your
5 name is called, you will come forward, you'll come around to a
6 place basically right in front of the court reporter, right
7 here, right in front of the bench down there. You'll turn and
8 fact to the back of the courtroom. At that time, the clerk's
9 representative will inquire of the state to present or excuse
10 the juror. After that, the clerk's representative will
11 inquire of the defense to seat or excuse the juror. If you
12 are excused by either the state or the defense, you go back
13 and have a seat from whence you came; if you're presented by
14 the state, seated by the defense, the clerk's representative
15 will instruct you to go to the jury box and have a seat in the
16 jury box as a member of this jury. If you have any personal
17 items, purse, book, whatever it might be, please bring that
18 along with you so that if you are presented by the state and
19 seated by the defense, you can go directly to the jury box.

20 All right. Mr. Clerk? Yes, sir. Well, actually -- all
21 right. Very good.

22 THE CLERK: 354, Cody Stickles.

23 THE COURT: Right there in the center and just turn
24 around face the ---

25 THE CLERK: What say the state?

1 MR. DEBUSK: Please present the juror.
2 THE CLERK: Defense?
3 MR. GALMORE: Please seat the juror.
4 THE CLERK: Please be seated in the jury box.
5 130, Karen Godfrey.
6 What say the state?
7 MR. DEBUSK: Please present the juror.
8 THE CLERK: Defense?
9 MR. GALMORE: Please seat the juror.
10 THE CLERK: Please be seated in the jury box.
11 153, Kathy Harbaugh.
12 What say the state?
13 MR. DEBUSK: Please present the juror.
14 THE CLERK: Defense?
15 MR. GALMORE: 153?
16 THE CLERK: Yes, sir.
17 THE COURT: Yes, sir.
18 MR. GALMORE: Please excuse the juror in the trial of
19 this case.
20 THE CLERK: You're excused from this particular case.
21 95, Karla Escobar.
22 What say the state?
23 MR. DEBUSK: Please present the juror.
24 THE CLERK: Defense?
25 MR. GALMORE: Please seat the juror.

1 THE CLERK: Please be seated in the jury box.
2 225, Robbie Lucas.
3 What say the state?
4 MR. DEBUSK: Please present the juror.
5 THE CLERK: Defense?
6 MR. GALMORE: Please seat the juror.
7 THE CLERK: Please be seated in the jury box.
8 233, Douglas Martin.
9 What say the state?
10 MR. DEBUSK: Please present the juror.
11 THE CLERK: Defense?
12 MR. GALMORE: Please excuse the juror in the trial of
13 this case.
14 THE CLERK: You're excused from this particular case.
15 134, Douglas Goolsby.
16 What say the state?
17 MR. DEBUSK: Please present the juror.
18 THE CLERK: Defense?
19 MR. GALMORE: Please seat the juror.
20 THE CLERK: Please be seated in the jury box.
21 27, Sandra Bergstrom.
22 What say the state?
23 MR. DEBUSK: Please present the juror.
24 THE CLERK: Defense?
25 MR. GALMORE: Please the excuse the juror in the trial of

1 this case.

2 THE CLERK: You're excused from this particular case.

3 59, Walter Check.

4 What say the state?

5 MR. DEBUSK: Please present the juror.

6 THE CLERK: Defense?

7 MR. GALMORE: Please seat the juror.

8 THE CLERK: Please be seated in the jury box.

9 107, Sarah Jordan.

10 THE COURT: 197, isn't it?

11 THE CLERK: 197, I'm sorry.

12 THE COURT: It's okay.

13 THE CLERK: What say the state?

14 MR. DEBUSK: Please present the juror.

15 THE CLERK: Defense?

16 MR. GALMORE: Please seat the juror.

17 THE CLERK: Please be seated in the jury box.

18 360, Demardre' Summerson.

19 What say the state?

20 MR. DEBUSK: Please excuse the juror.

21 THE CLERK: You're excused from this particular case.

22 238, Jaymee Maynard.

23 What say the state?

24 MR. DEBUSK: Please present the juror.

25 THE CLERK: Defense?

1 MR. GALMORE: Please excuse the juror.

2 THE CLERK: You're excused from this particular case.

3 241, Glenda McCray.

4 What say the state?

5 MR. DEBUSK: Was it 241?

6 THE CLERK: Yes, sir.

7 THE COURT: 241, yes, sir.

8 MR. DEBUSK: Your Honor, may we approach?

9 THE COURT: Certainly.

10 (REPORTER'S NOTE: Bench conference is held off the record in
11 the presence of but outside the hearing of the jury.)

12 THE COURT: All right. Very good.

13 Ms. McCray, you asked to be protected for Thursday?

14 JUROR 241: Yes, sir.

15 THE COURT: All right. Well, then we'll have to excuse
16 you from this particular case because it will go into
17 tomorrow.

18 JUROR 241: Okay.

19 THE COURT: Okay. Thank you. So, you can go back and
20 have a seat.

21 JUROR 241: All right. Thank you.

22 THE COURT: Thank you, ma'am. It won't be any longer,
23 but it will go into tomorrow.

24 THE CLERK: 363, Amy Swinton.

25 What say the state?

1 MR. DEBUSK: Please present the juror.
2 THE CLERK: Defense?
3 MR. GALMORE: Please seat the juror.
4 THE CLERK: Please be seated in the jury box.
5 80, William Day.
6 What say the state?
7 MR. DEBUSK: Please present the juror.
8 THE CLERK: Defense?
9 MR. GALMORE: Please seat the juror.
10 THE CLERK: Please be seated in the jury box.
11 187, Fain Johnson.
12 What say the state?
13 MR. DEBUSK: Please excuse the juror.
14 THE CLERK: You're excused from this particular case.
15 322, Debra Shealy.
16 What say the state?
17 MR. DEBUSK: Please present the juror.
18 THE CLERK: Defense?
19 MR. GALMORE: Please seat the juror.
20 THE CLERK: Please be seated in the jury box.
21 103, Everette Ferich.
22 What say the state?
23 MR. DEBUSK: Please present the juror.
24 THE CLERK: defense?
25 MR. GALMORE: Please seat the juror.

1 THE CLERK: Please be seated in the jury box.
2 74, Bradham Davis.
3 What say the state?
4 MR. DEBUSK: Please present the juror.
5 THE CLERK: Defense?
6 MR. GALMORE: Please excuse the juror in the trial of
7 this case.
8 THE CLERK: You're excused from this particular case.
9 279, Elizabeth Phillips.
10 What say the state?
11 MR. DEBUSK: Please present the juror.
12 THE CLERK: Defense?
13 MR. GALMORE: Please excuse the juror in the trial of
14 this case.
15 THE CLERK: You're excused from this particular case.
16 15, Marc Barbour.
17 What say the state?
18 MR. DEBUSK: Please excuse the juror.
19 THE CLERK: You're excused from this particular case.
20 216, Audrey Lewis.
21 What say the state?
22 MR. DEBUSK: Please excuse the juror.
23 THE CLERK: You're excused from this particular case.
24 138, Jason Gray. What say the state?
25 MR. DEBUSK: Please present the juror.

1 THE CLERK: Defense?

2 MR. GALMORE: Please seat the juror.

3 THE CLERK: Please be seated in the jury box.

4 THE COURT: All right. There'll be one alternate. It
5 will be one and two on the alternate.

6 THE CLERK: 387, Patricia Whitner.

7 What say the state?

8 MR. DEBUSK: Please present the juror.

9 THE CLERK: Defense?

10 MR. GALMORE: Please excuse the juror in the trial of
11 this case.

12 THE CLERK: You're excused from this particular case.
13 212, Nancy Leggens.

14 What say the state?

15 MR. DEBUSK: Please present the juror.

16 THE CLERK: Defense?

17 MR. GALMORE: Please seat the juror.

18 THE CLERK: Please be seated in the jury box.

19 THE COURT: All right. Ms. Leggens, you are the
20 alternate in this particular case, ma'am. Thank you very
21 much.

22 BY THE COURT:

23 THE COURT: All right. Any objections to the jury as
24 empaneled from the state?

25 MR. DEBUSK: No, Your Honor.

1 THE COURT: From the defense?

2 MR. GALMORE: No, sir.

3 THE COURT: All right. Very good. I find the jury has
4 been properly empaneled pursuant to *Batson v. Kentucky* and
5 *J.E.B. v. Alabama*.

6 All right. Ladies and gentlemen, I'm gonna send you into
7 the jury room in just a moment. I'm gonna ask that you do one
8 thing for the Court, and that's going to be select your
9 foreperson for this particular jury. So, let me tell you very
10 briefly what the foreperson's duties are. If we are here in
11 the courtroom and the jury needs attention to some matter, the
12 witness needs to speak up or the lawyers, whatever it is, the
13 foreperson may raise their right hand, gets the Court's
14 attention, we'll handle the matter whatever it is. If you're
15 back in the jury room and some matter comes up, you'll take
16 the pad and pen provided to you, you will write out a note,
17 you'll sign it, you'll give it to the bailiff and it will come
18 to me and we'll handle the matter whatever it might be. When
19 we have gone through the evidentiary portion of the trial,
20 we've heard the witnesses that are gonna testify in this
21 particular case, and had the closing arguments of the
22 attorneys, and then I have given to you the law that you will
23 apply to the facts and evidence you have heard in this case,
24 I'll submit the case to you, give the case to you for your
25 deliberations and unanimous decision in this particular

1 matter. At that point in time, the foreperson's duties and
2 responsibilities change in this regard. The foreperson is
3 gonna act like the chairperson at a meeting, guide the
4 discussions if necessary, but the foreperson's voice and vote
5 carries no more weight than any other member of the jury.
6 Everybody is equal in that regard. Again, the foreperson
7 guides the discussions if necessary; some matter come up,
8 again, write out the note, sign it, give it to the bailiff, it
9 will come to me and we'll handle the matter whatever it is.
10 The final duty and responsibility of the foreperson is once
11 the jury has well and truly deliberated, you have reached your
12 unanimous decision in this particular matter, the foreperson
13 will take the printed verdict form that the Court will provide
14 to you, you will check the appropriate block, you will sign
15 your name putting the correct date on there indicating that
16 indeed whatever you have indicated on the verdict form is the
17 unanimous verdict of each and every member of the jury in this
18 particular case.

19 So, with that, I'm gonna ask that you go back to your
20 jury room, select your foreperson, knock on the door, let the
21 bailiff know who that is. And as to picking the foreperson,
22 Ms. Leggens, as the alternate, you cannot be the foreperson.
23 You can vote on the foreperson, but you cannot be the
24 foreperson. Everyone else is eligible to be the foreperson.
25 All right?

1 Thank you very much.

2 (REPORTER'S NOTE: Jury exits courtroom @ 10:21 a.m.)

3 THE COURT: All right. Ladies and gentlemen of the jury
4 that were not selected for this particular case, I need for
5 you to go downstairs, go back to the assembly room. I believe
6 Judge Newman has got a -- a one-day case that he needs to try.
7 So, go back downstairs to the jury assembly room on the first
8 floor.

9 Thank you very much.

10 (REPORTER'S NOTE: Jury Venire exits courtroom @ 10:22 a.m.
11 The following takes place outside the presence of the jury.)

12 THE COURT: All right. Gentlemen, I understand we have
13 two matters. The notification regarding trial in absence and
14 then the *Jackson v. Denno* matter; is that correct?

15 MR. DEBUSK: Yes, Your Honor.

16 THE COURT: All right. Very good. So, for trial in the
17 absence, regarding that, the court decisions indicate, before
18 a defendant may be tried in absentia, the Trial Court has to
19 determine that the defendant voluntarily waived his right to
20 be present at trial, making findings of fact on the record
21 that the defendant, one, received notice of his right to be
22 present; and two, was warned that the trial would proceed in
23 his absence. So, with that, I'll receive whatever
24 information the state can provide to the Court.

25 MR. DEBUSK: Your Honor, I have a number of bond forms

1 which show that he was informed that he would be tried in his
2 absence if he did not appear. These are certified copies from
3 the clerk's office. I can Mr. Alter on the stand.

4 THE COURT: Is there -- is that, Mr. Galmore, have you
5 looked at those documents? Have those marked by the court
6 reporter, please, as a state's exhibit for identification
7 only.

8 MR. DEBUSK: Mark them as a group, Your Honor?

9 THE COURT: Yes, sir; that would be fine.

10 MR. DEBUSK: Thank you. That will be State's 1 for
11 identification, Your Honor.

12 THE COURT: All right. Very good.

13 And, Mr. Galmore, you've had a chance to examine State's
14 1; is that correct?

15 MR. GALMORE: Yes, sir.

16 THE COURT: Is there any question that those are
17 certified true copies of records in the clerk of court's
18 office?

19 MR. GALMORE: No, sir.

20 THE COURT: All right. So, is the defense requiring the
21 state to call the representative of the clerk's office to so
22 verify that?

23 MR. GALMORE: No, sir.

24 THE COURT: All right. Thank you very much. All right.
25 So, with that, then the Court will accept State's Exhibit 1

1 into evidence regarding the trial in the absence matter.

2 STATE'S EXHIBIT NUMBER 1

3 ADMITTED INTO EVIDENCE AS TO TIA

4 THE COURT: As indicated by the state, this is bond
5 paperwork for the defendant in this matter, Devin Lavar Outen,
6 dated 1/18/2019 that has on the second page of the document
7 right above the defendant's signature, that I understand and
8 have been informed I have a right and obligation to be present
9 at trial. And should I fail to attend the court, the trial
10 will proceed in my absence. And also, that it's been
11 explained to me that if I fail to appear before the Court as
12 required, a warrant for my arrest will be issued. And, as to
13 that particular matter, as I understand it a bench warrant has
14 already been issued for Mr. Outen; is that correct?

15 MR. DEBUSK: Your Honor, a bench warrant has not been
16 issued. He does, however, have two arrest warrants for escape
17 and altering or tampering with a electronic monitoring device.

18 THE COURT: All right.

19 MR. DEBUSK: Which are current and in NCIC at this time.

20 THE COURT: All right. So, all right. So, there are
21 arrest warrants for him?

22 MR. DEBUSK: Yes, Your Honor.

23 THE COURT: Outstanding. All right. Very good.

24 All right. There's also the order altering bond in this
25 matter, and again, that was ---

1 MR. DEBUSK: Your Honor, the order altering bond was just
2 there to show why there are two copies of ---

3 THE COURT: And so, well, previously -- the original bond
4 was 7/7/2018.

5 MR. DEBUSK: Uh-huh, (affirmative response).

6 THE COURT: The 1/18/2019 was the order for the bond when
7 it was modified. The original bonding paperwork of 7/7/2018
8 also reflects right above the defendant's signature, again,
9 that I understand and have been informed that I have a right
10 and obligation to be present at trial and should I fail to
11 attend court, the trial will proceed in my absence. So, the
12 Court recognizes the notices given to the defendant regarding
13 that particular matter.

14 Also, the matter was for trial this particular week, and
15 as I understand it, Solicitor and Mr. Galmore, the defendant
16 was present on Monday morning at the call of the -- the call
17 of the Court at that point in time; is that correct?

18 MR. GALMORE: Yes, sir; that is correct.

19 THE COURT: All right. And since that time, the defense
20 has been unable to communicate or locate Mr. Outen; is that
21 correct?

22 MR. GALMORE: Yes, sir.

23 THE COURT: All right. Despite your best efforts to so
24 notify him and -- and let him know, and with that, obviously
25 he understood he was on the trial roster for this week?

1 MR. GALMORE: Yes, sir.

2 THE COURT: He showed up. All right. Thank you very
3 much.

4 Anything else from the state?

5 MR. DEBUSK: Your Honor, I do have my assistant here with
6 the subpoenas and demonstrate they were set, and we have a
7 statement, I'm sorry, Your Honor, the sheriff's office
8 electronic monitoring, they can testify that he was here and
9 cut off his device.

10 THE COURT: All right. Very good. I would ask that you
11 would call those witnesses, please?

12 MR. DEBUSK: The state calls Michelle Larrimore.

13 THE COURT: All right. Please come around, ma'am.

14 THE CLERK: Raise your right hand and place your left
15 hand on the Bible.

16 MICHELLE LARRIMORE, HAVING BEEN DULY SWORN
17 TESTIFIES AS FOLLOWS:

18 THE CLERK: Step around and state your name for the
19 Court?

20 MS. LARRIMORE: Michelle Larrimore.

21 DIRECT EXAMINATION OF MICHELLE LARRIMORE BY MR. DEBUSK:

22 Q: Ms. Larrimore, who is your employer?

23 A: Horry County Solicitor's Office.

24 Q: And what are your duties?

25 A: I'm a paralegal to a senior solicitor.

1 Q: Okay. As part of your duty, are you responsible for
2 sending out subpoenas for trials on cases assigned to the
3 senior solicitor you work for?

4 A: Yes, sir.

5 Q: Did you send such a subpoena to Devin Outen?

6 A: Yes, sir.

7 Q: To what address would it be sent?

8 A: To 3555 Highway 544 Overpass, Apartment 28-H, Conway.

9 Q: Where do you get that address to use?

10 A: Off of this bond paperwork.

11 Q: Has there been any change of address submitted on his
12 case?

13 A: No, sir.

14 Q: Thank you. Do you have a copy of that?

15 A: I do.

16 MR. DEBUSK: Your Honor, we would submit this as State's
17 Exhibit 2?

18 THE COURT: All right. Mark that and show it to Mr.
19 Galmore, please?

20 MR. DEBUSK: Yes, Your Honor.

21 THE COURT: All right. Any objection?

22 MR. GALMORE: No, sir.

23 THE COURT: All right. It's allowed into evidence
24 regarding the trial in absence notice.

25 STATE'S EXHIBIT NUMBER 2

1 ADMITTED INTO EVIDENCE AS TO TIA

2 THE COURT: Yes, sir, please.

3 MR. DEBUSK: No further questions, Your Honor.

4 THE COURT: Any questions of this witness, Mr. Galmore?

5 MR. GALMORE: Very briefly, Your Honor.

6 CROSS-EXAMINATION OF MICHELLE LARRIMORE BY MR. GALMORE:

7 Q: Ms. Larrimore, was the subpoena sent by certified mail?

8 A: No, sir, just regular mail.

9 Q: Okay. Did Mr. Outen have to sign for receipt of the
10 subpoena?

11 A: No, sir.

12 Q: Okay. Was the subpoena hand delivered by a deputy?

13 A: No, sir.

14 Q: All right. Do you have any documentation that shows that
15 he received the subpoena in the mail?

16 A: No, sir, not that it was received, but it has not been
17 returned in the mail.

18 Q: Yes, ma'am. And it was sent by standard U.S. mail?

19 A: Yes, sir.

20 Q: All right. Thank you very much. No further questions.

21 THE COURT: Anything else from the state on this witness?

22 MR. DEBUSK: No, Your Honor.

23 THE COURT: All right. You may step down, ma'am. Thank
24 you. You can call your next witness, please?

25 MR. DEBUSK: The state calls Robert Butler.

1 THE COURT: All right, sir. Please come around to be
2 sworn, sir.

3 THE CLERK: Please raise your right hand and place your
4 left hand on the Bible.

5 ROBERT BUTLER, HAVING BEEN DULY SWORN
6 TESTIFIES AS FOLLOWS:

7 THE CLERK: State your name for the Court.

8 MR. BUTLER: Robert Butler, R-O-B-E-R-T, B-U-T-L-E-R.

9 DIRECT EXAMINATION OF ROBERT BUTLER BY MR. DEBUSK:

10 Q: Sergeant Butler, who is your employer?

11 A: Horry County Sheriff's Office.

12 Q: And what are your duties?

13 A: I'm currently the sergeant and supervisor over the home
14 detention section.

15 Q: Was Devin Outen required by the terms of his bond to wear
16 an electronic monitoring device?

17 A: Yes, sir; he was.

18 Q: When was that placed on him?

19 A: It was placed on Mr. Outen on 7/8, excuse me, 7/7/2018.

20 Q: July 7th, 2018?

21 A: Correct.

22 Q: Was that monitor on his ankle -- is that correct -- on
23 his ankle?

24 A: Correct, it was affixed to his ankle.

25 Q: Are you able to track his whereabouts?

1 A: Yes, sir, we are.

2 Q: Where was he on the morning of Monday, February the 3rd?

3 A: He left his primary -- he left his residence, traveled to
4 the courthouse, and he stayed at the courthouse approximately
5 an hour, and then he departed the courthouse.

6 Q: What did he do after he departed the courthouse?

7 A: The device and software indicated a master tamper, which
8 means that the device had been taken off, cut, and from there
9 the device was located in the area of Lewis Street in Conway,
10 and it was recovered by Horry County Home Detention Deputies.

11 Q: Have you had any contact or knowledge of his location
12 since then?

13 A: We have not.

14 Q: Is he required to check in if something were to happen to
15 this?

16 A: Yes. Yes, he is, if there's any malfunction, if the
17 device were to come off inadvertently, he would be instructed
18 to contact home detention deputies that would could take care
19 of it..

20 Q: And all the terms are explained to him before the device
21 is placed on him?

22 A: Yes, sir.

23 Q: Thank you. Please answer any questions

24 THE COURT: Cross-examination?

25 CROSS-EXAMINATION OF ROBERT BUTLER BY MR. GALMORE:

1 Q: Sergeant Butler, you indicated that the GPS device was
2 recovered?

3 A: Yes, sir; it was.

4 Q: And when was that recovered?

5 A: It was recovered approximately 10 or 15 minutes after the
6 master tamper was received.

7 Q: I'm sorry; you said 15 minutes?

8 A: 10 to 15 minutes; yes, sir.

9 Q: 10 to 15 minutes. Okay. When it was recovered, was
10 there any sign of struggle or blood or anything like that in
11 the area of the GPS device?

12 A: No, sir.

13 Q: Thank you very much.

14 THE COURT: All right. Anything else from the state?

15 REDIRECT EXAMINATION OF ROBERT BUTLER BY MR. DEBUSK:

16 Q: Had the GPS device been cut?

17 A: Yes, sir, it has; the strap.

18 THE COURT: Anything else, Mr. Galmore?

19 MR. GALMORE: No, sir. Thank you.

20 THE COURT: All right, sir. You may step down, sir.

21 Thank you very much. Anything else from the state?

22 MR. DEBUSK: No, Your Honor, that's our showing.

23 THE COURT: All right. Anything from the defense as to
24 the trial in absence notice?

25 MR. GALMORE: No, sir, Your Honor.

1 BY THE COURT:

2 THE COURT: All right. Based upon the information
3 provided to the Court, I do find that the requirements for a
4 trial in absence have been satisfied. I do find that the
5 defendant received notice of his right to be present and was
6 warned that the trial would proceed in his absence, not only
7 through the bond paperwork, but he obviously knew by his
8 appearance on Monday, two days ago, that the matter was on the
9 trial roster, that he was up for trial this week. And the
10 Court also takes notice that the monitoring device that Mr.
11 Outen had been wearing since July 7th of 2018 was removed from
12 his presence after he was aware that the trial would proceed.
13 And therefore, finding the requirements for trial in absence
14 satisfied, I will allow the state to proceed in this matter
15 for a trial against Devin Lavar Outen without his presence.

16 Thank you very much.

17 All right. The panel selected, counsel, selected Juror
18 Number 130, Karen Godfrey, as the foreperson.

19 Looking at the time, you told me the *Jackson v. Denno*
20 was two hours?

21 MR. DEBUSK: A little over two hours, Your Honor.

22 THE COURT: A little over two hours, so looking at the
23 time then, why don't we have the panel come back at 2 o'clock.
24 That will give plenty of time to finish the hearing and then
25 give y'all a break before they -- before we start the trial.

1 Okay?

2 MR. DEBUSK: That's fine.

3 MR. GALMORE: Yes, sir.

4 THE COURT: All right. Very good. All right.

5 MR. DEBUSK: Your Honor, may I have a few moments to get
6 my ---

7 THE COURT: Yes, sir. So, we'll take a short break for
8 about 5 minutes then. Okay? Thank you.

9 **RECESS - 10:36 A.M.**

10 *****OFF THE RECORD*****

11 **ON THE RECORD - 10:58 A.M.**

12 (REPORTER'S NOTE: The following takes place outside the
13 presence of the jury.)

14 JACKSON V. DENNO:

15 THE COURT: Please be seated.

16 Counsel, as I understand it, the video is two hours and
17 45 minutes.

18 MR. DEBUSK: Yes, Your Honor. I thought it was two-and-
19 a-half, but it's two hours and 45 minutes.

20 THE COURT: All right. Well, and I appreciate that. In
21 *Jackson v. Denno*, the Court must satisfy itself that the
22 statement is the free and voluntary statement of the
23 defendant; that he was advised of his Miranda warnings if he
24 was in detention; that he wasn't threatened, coerced, promised
25 anything, you know, leniency, hope or reward. Usually, a lot

1 of that is taken care of at the beginning of a statement. I'm
2 assuming both the state and the defense have viewed the
3 entirety of this video; is that correct, Solicitor?

4 MR. DEBUSK: Yes, Your honor.

5 THE COURT: And for the defense?

6 MR. GALMORE: Yes, sir.

7 THE COURT: All right. Other than the initial matters,
8 at any point in time, is there any indication from the
9 defendant that he wants to stop making a statement, that he
10 wants a lawyer, that he wants to invoke his rights in any way
11 or there is any type of coercion or promises of hope or
12 leniency; how about that, Mr. Galmore?

13 MR. GALMORE: Yes, sir, Your Honor. He does not stop and
14 ask for an attorney at any time in the interview. However,
15 our argument is that he was under the influence of drugs and
16 alcohol that might have affected what was said.

17 Your Honor, on the video, well, Mr. Outen was shot by the
18 homeowner, taken to the hospital, and then taken to the M.L.
19 Brown Building to give a statement. It appears from the
20 medical records that he might've been on some Oxycodone that
21 was prescribed as a result of the gunshot wound. He indicates
22 to the Horry County officers that he had been drinking that
23 evening. He describes that he went out that evening with his
24 girlfriend, they were at the Captain's Quarters having drinks.
25 There is also an 18-pack of Coors Light that was found in the

1 car. And after the statement is given, I think they have to
2 take him back to the hospital. I think his wound is bleeding
3 or something along those lines. Your Honor, we would just
4 submit to the Court that he was under the influence of the
5 alcohol and the drugs; and therefore, the statement should be
6 found to be inadmissible.

7 THE COURT: All right. Very good. And I'm not
8 indicating that we don't need to hear, you know, a good
9 portion of the statement, but I'm just wondering if in its
10 entirety we have to play the whole thing. Is there things --
11 you know, let's say at the -- at the end, you know, or other
12 matters that anything that you would find that ---

13 MR. GALMORE: Well, the solicitor has redacted about an
14 hour of time ---

15 THE COURT: Okay.

16 MR. GALMORE: --- when Mr. Outen is sitting in the
17 interview room by himself, just kind of mumbling to himself.

18 THE COURT: Okay.

19 MR. GALMORE: We appreciate that. They have also
20 redacted a portion where Mr. Outen makes reference to doing
21 some time in prison previously.

22 MR. DEBUSK: We have not yet redacted that, Your Honor,
23 but we will.

24 THE COURT: You will do that?

25 MR. DEBUSK: We do agree to do so.

1 THE COURT: All right, sir. All right. Very good.

2 MR. GALMORE: Other than that, I don't know of anything
3 else that needs to be redacted out of the statement.

4 THE COURT: All right. Very good. All right. Well,
5 let's start it and see. All right.

6 MR. DEBUSK: Our argument will be, you can tell about his
7 demeanor in the first certainly 20 minutes of it.

8 THE COURT: All right, sir. Well, let -- let -- let's --
9 let's get it started and see where we are. Okay?

10 MR. DEBUSK: The state calls John Brantly.

11 THE COURT: All right, sir. Please come around and be
12 sworn, sir.

13 MR. DEBUSK: Your Honor, before we sewar him ---

14 THE COURT: Yes.

15 MR. DEBUSK: --- we have the order issuing the bench
16 warrant.

17 THE COURT: All right. Very good. Good. You can come
18 around, sir.

19 THE CLERK: Please raise your right hand and put your
20 left hand on the Bible.

21 JOHN BRANTLY, HAVING BEEN DULY SWORN
22 TESTIFIES AS FOLLOWS:

23 MR. BRANTLY: John Brantly, B-R-A-N-T-L-Y.

24 THE COURT: Very good, sir. Thank you very much.

25 MR. DEBUSK: Thank you, Your Honor.

1 DIRECT EXAMINATION OF JOHN BRANTLY BY MR. DEBUSK:

2 Q: Mr. Brantly, who is your employer?

3 A: Horry County Police Department.

4 Q: What are your duties at this time?

5 A: I'm a narcotics and vice detective.

6 Q: How about in July of 2018; what were your duties then?

7 A: I worked for the homicide and major crimes division.

8 Q: As part of that -- your duties then, did you investigate
9 an incident that occurred on -- was it ---

10 MR. GALMORE: July 6.

11 BY MR. DEBUSK:

12 Q: Greenleaf Lane.

13 A: Yes.

14 Q: Or Greenleaf Drive?

15 A: Greenleaf Drive, yes, sir.

16 Q: All right. Getting in too much of a hurry.

17 What was your role?

18 A: I was the primary detective.

19 Q: Was anyone -- another detective assigned with you?

20 A: Yes. Detective Hemingway assisted me.

21 Q: Where is Detective Hemingway at this time?

22 A: He is in the Northeast at a homicide trial up there. He
23 was subpoenaed by the court.

24 Q: The State of Massachusetts?

25 A: Massachusetts; yes, sir.

1 Q: Thank you. However, at any point during this
2 investigation, did you interview the defendant, Devin Outen?
3 A: Yes.
4 Q: When did that occur?
5 A: That occurred later in the morning at the M.L. Brown
6 Building.
7 Q: Okay. If you -- I'll give you a copy of your report, can
8 you tell us the time of that interview?
9 A: Yes.
10 MR. DEBUSK: Your Honor, I'm giving you the witness his
11 report to review.
12 THE COURT: All right, sir.
13 A: It was approximately 8:30 on July 6th, 2018
14 Q: 8:30 a.m.?
15 A: Yes, sir, I'm sorry.
16 Q: Okay. Thank you. You can hold onto that.
17 A: Okay.
18 Q: Where did this interview take place again?
19 A: The M.L. Brown Building.
20 Q: In what kind of room?
21 A: The interview room.
22 Q: Was that room equipped with a recording device?
23 A: Audio/video; yes, sir.
24 Q: Okay. Was anyone with you when you conducted the
25 interview?

1 A: Detective Hemingway was with me.

2 Q: And that's the same detective that was assigned the case
3 with you?

4 A: Correct; yes, sir.

5 Q: Did he seem alert in response to your questions?

6 A: Yes, sir.

7 Q: Did he show any signs of being drugged or intoxicated?

8 A: Not at all.

9 Q: Was he denied medical attention, food, drink, or anything
10 else to make him talk?

11 A: Not at all.

12 Q: Was he threatened or intimidated in any way?

13 A: Absolutely not.

14 Q: Had he been released from the hospital before you talked
15 to him?

16 A: Yes, sir. He was medically discharged and released to
17 go.

18 Q: What nature of injury did he have?

19 A: He had a gunshot wound.

20 Q: Was it -- was there a bullet lodged in him or was this a
21 through-and-through?

22 A: No, they -- for lack of better terms, they called it a
23 through-and-through. A single gunshot wound in front of the
24 abdomen and exited the rear of him.

25 Q: And he had been released after just a couple of hours?

1 A: Yes, he was -- he was treated and released.
2 Q: Did you inform him of his Miranda rights?
3 A: Yes.
4 Q: When you inform a defendant of Miranda rights, do you use
5 a form?
6 A: Correct. It's a standard department-issued form.
7 Q: I'll show you, I guess it will be State's 3. Court's
8 indulgence one moment?
9 THE COURT: Yes, sir.
10 BY MR. DEBUSK:
11 Q: State's 3 and ask if you recognize that?
12 A: Yes; I do.
13 Q: What is that?
14 A: That's our standard advisement of Miranda rights form for
15 the Horry County Police Department.
16 Q: Do you read from that form when you -- when you give the
17 Miranda rights?
18 A: Yes; I do.
19 Q: Do they initial it showing they understood?
20 A: Yes; they do.
21 Q: Did Mr. Outen execute that particular copy that you have
22 in your hand?
23 A: He did; yes, he initialed this.
24 Q: He signed and waived his rights?
25 A: Yes, he did.

1 Q: He was willing to give a statement.

2 MR. DEBUSK: Your Honor, we'd move State's 3 into
3 evidence for purposes of this hearing?

4 THE COURT: Any objection.

5 MR. GALMORE: No, sir.

6 THE COURT: It's in evidence for the purposes of the
7 hearing.

8 STATE'S EXHIBIT NUMBER 3

9 ADMITTED INTO EVIDENCE FOR PRETRIAL

10 BY MR. DEBUSK:

11 Q: And we've already talked about it, but was the interview
12 actually recorded?

13 A: Yes.

14 Q: Have you viewed what we have marked as State's Exhibit 4;
15 have you viewed State's Exhibit 4 and can you tell the Court
16 what this is?

17 A: Yes, I have. That is a -- the audio and video interview
18 of Devin Outen at the time that he was interviewed at the M.L.
19 Brown building.

20 Q: On that version have certain sections been cut out when
21 the defendant was in the room alone?

22 A: Was this the version we just ---

23 Q: Yes.

24 A: Yes, sir.

25 Q: In fact, that's the one you looked at because that's ---

1 A: Correct, I've got my signature on it, yes.

2 Q: Thank you. Your Honor, we would move State's 4 into
3 evidence and ask to publish it in part as much as the Court
4 cares to hear?

5 THE COURT: All right. Any objection to that?

6 MR. GALMORE: No, sir.

7 THE COURT: All right. State's 4 is in evidence for the
8 hearing. You may proceed.

9 STATE'S EXHIBIT NUMBER 4

10 ADMITTED INTO EVIDENCE FOR PRETRIAL

11 (REPORTER'S NOTE: State's 4 published for the Court. Audio
12 not transcribed herein.)

13 MR. DEBUSK: Can we stop at this point for a moment.

14 BY MR. DEBUSK:

15 Q: Just for the Court's knowledge, Detective Brantly, this
16 is the real time up here, correct?

17 A: Yes.

18 Q: And so when that skips, that shows us a portion has been
19 cut out already?

20 A: Correct.

21 Q: Thank you. Please proceed.

22 (REPORTER'S NOTE: State's 4 published for the Court. Audio
23 not transcribed herein.)

24 MR. DEBUSK: Your Honor, this is -- we have published
25 this portion for purposes of finding voluntariness.

1 THE COURT: Yes, sir.

2 MR. DEBUSK: We have a couple more questions of the
3 detective, if I might?

4 THE COURT: All right. Very good.

5 MR. DEBUSK: May I get this marked, Madam Reporter?

6 BY MR. DEBUSK:

7 Q: Detective Brantly, let me show you -- can you identify
8 that?

9 A: I do.

10 Q: What is it?

11 A: It was a not-to-scale drawing of the incident area around
12 the victim's house.

13 Q: Is that the copy of -- a copy of the drawing that the
14 defendant made while you ---

15 A: It is.

16 Q: Does it show the back porch of the house?

17 A: It does.

18 Q: And the location of the door?

19 A: Yes.

20 Q: And at that point, he denied ever being around the back
21 porch; is that correct?

22 A: Correct.

23 Q: When he drew that?

24 A: Correct.

25 Q: Thank you.

1 MR. DEBUSK: Your Honor, we would -- we would move
2 State's 5 into evidence?

3 THE COURT: Show Mr. Galmore.

4 Is there any objection?

5 MR. GALMORE: No, sir, Your Honor.

6 THE COURT: All right. It's into evidence for the
7 hearing. You may proceed.

8 STATE'S EXHIBIT NUMBER 5

9 ADMITTED INTO EVIDENCE FOR PRETRIAL

10 BY MR. DEBUSK:

11 Q: Detective Brantly, is it true that this incident
12 initially was called in around 3:25 in the morning?

13 A: That sounds about right.

14 Q: So, this interview started at 8:30 in the morning?

15 A: Yes.

16 Q: Some five hours after the incident?

17 A: Correct.

18 Q: And he said the last time he drunk anything was around
19 the time of the incident; is that correct?

20 A: Yes. He said he had a small quantity of a beer.

21 Q: Before the incident?

22 A: Before the incident; yes, sir.

23 Q: Thank you. Please answer any questions Mr. Galmore has.

24 THE COURT: All right. Go ahead, Mr. Galmore.

25 CROSS-EXAMINATION OF JOHN BRANTLY BY MR. GALMORE:

1 Q: Detective Brantly, can you describe Mr. Outen's physical
2 condition at the time he gave his statement?

3 A: He had recently been discharged from Grand Strand
4 Hospital for a single gunshot wound.

5 Q: All right. And you indicated that he said he had been
6 drinking earlier in the evening?

7 A: He said he had a few drinks at Captain's Quarters with
8 his girlfriend and a mutual friend, and then a partial of a
9 Coor's Light.

10 Q: Did he -- did he tell you how much he had to drink at the
11 Captain's Quarters?

12 A: He indicated it was a few drinks. He said that he had
13 not drank in a long time, that wasn't his thing, but that he
14 indicated it was a few -- a few drinks.

15 Q: Right. Did you go to the Captain's Quarters to see how
16 much his bill was?

17 A: No, sir; I didn't.

18 Q: All right. Did you talk to his girlfriend and ask her
19 how much they had to drink?

20 A: I had spoke with his girlfriend prior to this interview.

21 Q: Right.

22 A: I did not have a follow-up conversation with her
23 inquiring, but her version of the incidents that lead up prior
24 to her being dropped off matched what he said in reference to
25 going to Cookout, having a few drinks at Captain's Quarters

1 and such.

2 Q: Right. And I think he stated that he had something to
3 drink when all of this was going down, making reference to the
4 fact that he was drinking at the gas station when he met this
5 second person?

6 A: Yes. He said he'd opened a beer and waited for the
7 alleged other individual to drink first and then he would have
8 a sip or so.

9 Q: Right. And thereafter, 911 is called about 3:25 in the
10 morning?

11 A: Yes, sir.

12 Q: Okay. Now, Mr. Outen was shot and taken to the hospital,
13 correct?

14 A: Correct.

15 Q: Do you know how long he was at the hospital?

16 A: I don't. I don't have that information.

17 Q: Okay.

18 A: He was -- but he was transported to the hospital and upon
19 discharge was immediately brought to the M.L. Brown Building.

20 Q: Do you know if he was given any medication at the
21 hospital?

22 A: I don't know if he was -- if he was physically given any
23 medication.

24 Q: Okay. But he was treated for the gunshot wound?

25 A: Yes, he was.

1 Q: Did you go to the hospital?

2 A: I did not, no, sir.

3 Q: Okay. All right.

4 MR. GALMORE: May I approach, Your Honor?

5 THE COURT: Yes, sir, please.

6 BY MR. GALMORE:

7 Q: Detective Brantly, let me hand you what's been marked as
8 State's Exhibit Number 3?

9 A: Yes, sir.

10 Q: That is the advisement of Miranda rights?

11 A: Yes, sir.

12 Q: And this is the form that Mr. Outen signed?

13 A: Yes, sir; it is.

14 Q: All right. And in the upper righthand corner it
15 indicates 10th grade, no drugs, and drinking at Captain's
16 Quarters?

17 A: Correct, yes, sir.

18 Q: Do you know who made those notations on this form?

19 A: I did.

20 Q: You did. Okay. So, you inquired about his educational
21 background?

22 A: Yes, sir.

23 Q: Okay. And he told you he had not completed school?

24 A: He said his last highest level of education was the 10th
25 grade.

1 Q: All right. And he indicated that he was not using drugs?

2 A: Correct.

3 Q: Okay. But he did indicate that he had been drinking
4 earlier in the evening?

5 A: That he had had some drugs prior; yes, sir.

6 Q: All right. Now, you asked him or advised him of his
7 rights and you go through them one by one, and when you asked
8 him whether he had a right to remain silent -- well, did you
9 advise him that he had a right to remain silent?

10 A: Yes. I verbally read it to him off the Miranda form.

11 Q: Okay. Did you ask him if he understood what that meant?

12 A: I asked him if he understood his rights, in which he
13 verbally stated yes, then he would initial such block and then
14 sign the form.

15 Q: So, he said that he understood his rights?

16 A: Yes.

17 Q: Okay. But did you ask him to explain the rights in his
18 own words for example?

19 A: No.

20 Q: No. All right. Now, at the signature line on the
21 advisement of rights form, is it correct that he printed on
22 the signature line, and he signed on the printed line?

23 A: That's correct.

24 Q: Now, after he gave the statement to you and Detective
25 Hemingway, did Mr. Outen require medical treatment further,

1 further medical treatment?

2 A: He was -- he was transferred -- transported back to Grand
3 Strand Hospital. I believe his wound was bleeding.

4 Q: Now, at first he's treated by EMS at the M.L. Brown
5 Building; is that correct?

6 A: That's correct, because that was the -- the closest
7 medical personnel that we had at the time.

8 Q: Right, and that portion of it is on the video?

9 A: Yes.

10 Q: Okay. And after he's treated at the M.L. Brown Building,
11 he is then taken to Grand Strand for further treatment; is
12 that correct?

13 A: I would say he was assessed at the M.L. Brown Building,
14 not treated.

15 Q: Okay. So, he was assessed at the M.L. Brown Building and
16 then taken to Grand Strand Hospital?

17 A: Yes, sir.

18 Q: Was he taken to the hospital by ambulance?

19 A: Yes; he was.

20 Q: Okay. And -- and did they keep him the second time he
21 was at the hospital?

22 A: They -- they treated him and then re-released him for
23 incarceration.

24 Q: All right. Do you know if he was given any medications
25 that second time he was at Grand Strand Hospital?

1 A: He was not.

2 Q: He was not?

3 A: I was present for that.

4 Q: Okay. But you weren't present the first time?

5 A: No, sir; I wasn't.

6 Q: All right. Thank you, Detective, no further questions.

7 A: Thank you.

8 THE COURT: Any redirect?

9 MR. DEBUSK: Yes, Your Honor.

10 REDIRECT EXAMINATION OF JOHN BRANTLY BY MR. DEBUSK:

11 Q: Did he appear intoxicated to you?

12 A: No.

13 Q: Did you smell alcohol?

14 A: I did not.

15 Q: Okay. He was arrested sometime after the incident; is
16 that correct?

17 A: Yes.

18 Q: And when he was arrested on Highway 544, an ambulance
19 came there, correct?

20 A: Correct.

21 Q: And then he was transported to the hospital, correct?

22 A: Correct.

23 Q: And he was released and transported back to Conway at the
24 M.L. Brown Building?

25 A: Correct.

1 Q: And he was back by 7:20?

2 A: Correct.

3 Q: So, in that four hours, he did all those things?

4 A: Yes.

5 Q: So, he was not at the hospital long?

6 A: No, no, no; not at all.

7 Q: Okay. And he told you when the last time he drank was

8 and that it was a small amount, correct, what he drank before

9 the incident?

10 A: In the parking lot at the gas station; yes, sir.

11 Q: Okay. One beer?

12 A: Correct.

13 Q: Okay. And just to make a point, at that time he was

14 talking, he was trying to tell you that he had not been behind

15 the trailer, correct?

16 A: Correct.

17 Q: Yeah, when he drew the diagram, he showed the porch on

18 the back of the trailer?

19 A: The initial -- his initial drawing if I could ---

20 THE COURT: Okay.

21 A: --- see it for a second. The initial drawing he drew was

22 a tree, the car, and a person. To further understand what he

23 was referencing, I drew the street, the house to include the

24 back deck.

25 Q: So, you drew the back porch?

1 A: And he made the tree larger and another person as well.

2 Q: But at that point, he was telling you that he had not
3 behind the trailer?

4 A: Correct.

5 Q: And later he said that he hadn't been ---

6 A: Later in the -- in the interview, he had said he didn't
7 -- didn't go back to there.

8 Q: He was actually carrying out a plan to deceive you at
9 that time, correct?

10 A: Yes.

11 Q: Thank you.

12 MR. DEBUSK: No further questions, Your Honor.

13 THE COURT: Anything on those questions, Mr. Galmore?

14 MR. GALMORE: No, sir, Your Honor.

15 THE COURT: Very good.

16 ARGUMENT OF COUNSEL:

17 MR. DEBUSK: Your Honor, we would stand on that showing.
18 We feel that the tape speaks for itself, and the defendant was
19 not intoxicated, did not appear intoxicated; that he had been
20 treated for an injury, but it was a superficial bullet wound
21 injury that didn't allow -- didn't require him to be in the
22 hospital, certainly less than four hours, probably less than
23 an hour. He was actively trying to tell a story that he later
24 recanted which shows that he was putting thought into what he
25 was saying; he was planning on using deception in that he

1 never requested a lawyer, never invoked his rights.

2 Therefore, this was a voluntary statement.

3 THE COURT: All right, sir. Mr. Galmore, I'll be glad to
4 hear from you?

5 MR. GALMORE: Your Honor, under the totality of the
6 circumstances, the courts look to try to determine whether
7 this statement was voluntary, and some of the factors that the
8 courts consider are the element of police coercion, length of
9 interrogation, the location of interrogation, its continuity,
10 defendant's maturity, defendant's education, and most
11 important for us, defendant's physical condition and
12 defendant's mental health.

13 In this case, Your Honor, the physical condition is
14 clear; he's in a hospital gown. He had been shot; he had been
15 taken to the hospital. Then a statement was extracted from
16 him and then he was returned to the hospital. In addition,
17 Your Honor, he indicates that he had been drinking that
18 evening. He indicates that he had been drinking at the time
19 that all of this happened, and there are photos which show a
20 18-pack of Coor's Light in the defendant's vehicle.

21 While at the hospital, Your Honor, the medical records
22 indicate that he was given Oxycodone, a narcotic, to treat his
23 injuries. We ask the Court to take all of this into
24 consideration and to find that under the totality of the
25 circumstances, this was not a voluntary statement.

1 THE COURT: All right. Regarding that 18-pack of beer,
2 that's unopened, right; it's not 18 empty cans, correct?

3 MR. GALMORE: Well, the picture just shows an open 12
4 pack or 18 pack. You can't tell-- it's the outside of it; you
5 can't tell how many have been drank from inside.

6 THE COURT: All right. So, it's just a package that
7 indicates there's supposed to be 18 included in it?

8 MR. GALMORE: Yes, sir.

9 THE COURT: All right. So, there's no showing of the
10 cans themselves?

11 MR. GALMORE: No. There are not actual cans in the car.

12 THE COURT: All right. Very good. Okay. Well -- ok.
13 Very good. Okay. No cans visible?

14 MR. GALMORE: Correct.

15 THE COURT: All right. Very good. Good deal. All
16 right. Regarding this particular matter, first, clearly the
17 defendant was in custody; there's no question about that. So,
18 his Miranda warnings were required. From the Court's viewing
19 of the Miranda warnings -- and before I do that, Mr. Galmore,
20 you've examined the totality of this tape. Is there any
21 further portion of it that you would request the Court to view
22 before I make any finding?

23 MR. GALMORE: No, sir, Your Honor. Yeah, there's nothing
24 on the tape -- you see the EMS come in and treat him, but
25 that's the extent of it.

1 THE COURT: All right. So, but there's -- at no point in
2 time does he indicate, look, I want to stop talking; I want --
3 you know, I want my lawyer.

4 MR. GALMORE: That's correct.

5 THE COURT: I don't know what's going on -- anything like
6 that?

7 MR. GALMORE: That's correct.

8 THE COURT: All right, sir. Very good. Thank you. All
9 right.

10 BY THE COURT:

11 THE COURT: Again, clearly Miranda warnings were
12 required. I do find from the video that he was properly
13 advised of his Miranda warnings. All of them that were of
14 necessity needed -- that needed to be given were given. The
15 defendant indicated that to the officers that he understood
16 what his rights were, and he voluntarily waived those rights.
17 The Court has observed the defendant. He does not, from the
18 video, appear to be unstable in any way, either physically or
19 mentally. He seems to be in complete control. He's not -- he
20 moves around. He does not have any problem moving around.
21 You know, he stands up, ties his gown, sits down, adjusts,
22 moves to the other side of the table, again, sits down. He
23 has no problem moving; he's not stumbling around; he's not --
24 does not appear to be incapacitated in -- in any fashion.

25 In response to a basic question as to what happened, the

1 defendant basically launches into about a ten-minute story
2 without interruption, explaining what, in his mind, occurred.
3 To the Court's clear indication that he understands what's
4 going on, he is giving a coherent story. It may not
5 eventually turn out to be what he admits to later on, but he
6 does give a coherent story, that, you know, has a -- has an
7 indication that he is trying to give to the -- to the officers
8 what occurred at that point in time. Again, he doesn't have
9 any problems relaying this story. He's not slurring his
10 words; he's not stumbling over words. He basically launches
11 into a lengthy statement without any problem whatsoever.

12 Timeframes. He indicates that earlier in the evening he
13 had a couple of drinks. He does not indicate to the officers,
14 you know, that he became intoxicated at that point in time.
15 He may have had one beer or a portion thereof later on. And
16 again, there's no indication to the Court at the time of the
17 interview that he's under the influence of anything. There's
18 a statement by defense counsel that he was given some
19 medication at the hospital. I don't have any records in front
20 of me to so indicate, but even if he was, clearly from the
21 viewing of the statement, he is not suffering any disability
22 from the Court's observance of the defendant in the statement.

23 I find that he understood his Miranda warnings, they were
24 properly given to him. He properly initialed them. You know,
25 he might have signed where it says print and print where, you

1 know, sign -- you know, got that confused. But again, it's
2 not -- did not -- does not appear to the Court to indicate any
3 lack of understanding.

4 So, I'm gonna find that it is the free and voluntary
5 statement of the defendant in this matter. There is no --
6 also from counsel's statement, there's no indication that he
7 tried to later stop the interview or ask for an attorney, you
8 know, as was his right. And therefore, it's a free and
9 voluntary statement of the defendant, and I'll allow the state
10 to present it in evidence. Obviously, I will charge the jury
11 at the end that they are the judges of all of these matters,
12 that all the Court did was allow it in evidence, and they will
13 make the ultimate decision as to all of those issues.

14 Anything further from the state?

15 MR. DEBUSK: Nothing further, Your Honor.

16 THE COURT: From the defense?

17 MR. GALMORE: No, sir, Your Honor.

18 THE COURT: All right. Very good. All right, gentlemen,
19 the jury is coming back at 2 o'clock. We'll bring them in the
20 courtroom at 2:00 and begin the trial at that point in time.
21 All right?

22 MR. DEBUSK: Yes, Your Honor.

23 THE COURT: Thank you very much.

24 Gentlemen, at the very -- at the very beginning of the
25 tape, I made a note. The detectives come in around 8:27:25.

1 Right before that, you know, he's playing with the strings on
2 a gown and trying to adjust it and then turns around and faces
3 the camera. Is there some purpose that the state believes
4 that that should be on there, or should we start it when the
5 two detectives come in and he's sitting down.

6 MR. DEBUSK: We can certainly do that, Your Honor, I just
7 wanted to put that in there because there were other officers
8 in the room with him at that time.

9 THE COURT: All right. Mr. Galmore, I'm fine with it
10 being played, but I just -- is there a purpose for that?

11 MR. GALMORE: No, sir, Your Honor. I think the way the
12 Court suggested is probably the best way.

13 THE COURT: All right. So, he's -- where it is, where
14 he's sitting down and then the door opens and the two
15 detectives come in, let's start the tape at that point in
16 time.

17 MR. DEBUSK: And there's also a point where ---

18 THE COURT: You do need to redact the part about him
19 talking about his prior record and that sort of thing.
20 Obviously, that needs to come out.

21 MR. DEBUSK: Yes, Your Honor.

22 THE COURT: Okay. All right. Thank you very much.

23 MR. DEBUSK: It hasn't -- whether to play it as part of
24 the state's case. It would be the last witness if we do play
25 it.

1 THE COURT: All right. Very good.

2 MR. DEBUSK: Thank you.

3 THE COURT: Thank you.

4 **RECESS - 12:13 P.M.**

5 *****OFF THE RECORD*****

6 **ON THE RECORD - 2:00 P.M.**

7 THE COURT: Thank you very much. You may be seated.
8 Thank you.

9 All right. The jury -- all the jurors are here. Is the
10 state ready for the jury to come in?

11 MR. DEBUSK: Yes, Your Honor.

12 THE COURT: Defense?

13 MR. GALMORE: Yes, sir.

14 THE COURT: All right. Ask the jury to come in, please,
15 sir.

16 (REPORTER'S NOTE: Jury enters courtroom @ 2:01 p.m.)

17 THE COURT: All right. Ms. Godfrey, the jury has
18 selected you to be the foreperson; is that correct?

19 JUROR 130: Yes, Your Honor.

20 THE COURT: All right. So, if you would just always
21 occupy that particular seat when you come back from the jury
22 room, and the alternates, Ms. Leggens, if you would always
23 occupy that particular seat. Those are the only two seats
24 that the same people need to occupy. The rest of you, ladies
25 and gentlemen, just kind of fill in where it is you happen to

1 come back from the jury room.

2 The very first thing that we're gonna do, the clerk's
3 representative is going to administer your oath to you. If
4 you would all please stand at this time.

5 (REPORTER'S NOTE: Jury is duly sworn.)

6 THE COURT: Is there any member of the jury panel that
7 did not just affirmatively take the oath as given by the
8 clerk's representative? If so, please stand.

9 No juror having stood, I find the jury properly sworn in
10 this matter.

11 OPENING CHARGE TO JURY:

12 THE COURT: All right. Ladies and gentlemen, I am sure
13 that collectively you are sitting there and wondering what
14 your job and duties and responsibilities are. You are going
15 to be the judges of the facts of this case. I will not
16 indicate to you in any fashion what I think the facts of this
17 case are; it's my job and my responsibility. It's your job
18 and your responsibility to listen to the facts and evidence
19 presented. And at the end, I will call upon you to examine
20 those facts and evidence and determine whether or not the
21 state has proven the defendant guilty beyond a reasonable
22 doubt.

23 Now, I'm gonna remind you, the state charged the
24 defendant, Devin Lavar Outen, with the crime of attempted
25 burglary first degree. The indictment is merely the charging

1 document, the document which brings the matter to court; it's
2 not evidence, can't be considered by anyone as evidence in
3 this case. But when the state charged the defendant with that
4 crime, that put the burden of proof immediately upon the State
5 of South Carolina to prove the defendant guilty beyond a
6 reasonable doubt.

7 The defendant has nothing to show to you. The defendant
8 has nothing to prove to you. The defendant need not come
9 before you. It is the state's total and complete
10 responsibility to present evidence for your consideration to
11 see if the state can prove the defendant guilty beyond a
12 reasonable doubt. This is called a presumption of innocence.
13 That presumption of innocence came upon the defendant when he
14 was served with the indictment; it remains now; it stays with
15 the defendant unless and until you believe the state has
16 presented evidence to you that you find believable that proves
17 the defendant guilty beyond a reasonable doubt.

18 Now, I said believable. That's gonna be another one of
19 your jobs, duties, and responsibilities, judging the
20 credibility, that is the believability of witnesses that come
21 before you and testify under oath. And if you're thinking,
22 how do I judge somebody's credibility and believability? You
23 do it every single day of your life. When somebody is telling
24 you something, you're automatically judging in your own mind
25 whether or not you believe that person. You use your good

1 common sense. You use your good judgment that you use in
2 conducting your own affairs. That's what we're gonna be
3 asking you. Use your good common sense, listen to the facts
4 and evidence. At the end, I will give you the law that you
5 will apply to the facts and evidence, and you'll see, did the
6 state prove the defendant guilty beyond a reasonable doubt or
7 not.

8 How the trial will proceed. When I get done with these
9 brief statements to you, we'll have the opening statements of
10 the attorneys, then we'll have -- witnesses will come before
11 you today and tomorrow and testify under oath. I believe
12 sometime tomorrow we'll then have the closing arguments of the
13 attorneys and then the charge of the law, I will give you the
14 law that you're gonna apply to the facts and evidence that
15 you've heard in this case, and then I'll submit the case, give
16 the case to you for your deliberations and unanimous decision
17 in this particular matter.

18 A couple of things. Opening statements, closing
19 arguments, they are important. Opening statements by the
20 attorneys introduce the matter to you, the closing arguments,
21 they are comments on the facts and evidence, but neither one
22 of them are evidence. You can't use either one of them as
23 evidence in making your decision. That comes from the witness
24 stand and any kind of documentary or maybe physical evidence
25 that might be introduced into evidence.

1 Also, I will be asking you do not discuss this case at
2 any point in time until I give it to you at the very end for
3 your deliberations and unanimous decision. If you would
4 discuss it beforehand, you'd be doing it under an incomplete
5 set of facts, because you haven't heard all the evidence, and
6 you wouldn't know the law that you have to apply to the facts
7 and evidence you've heard in this case. So, please do not
8 discuss the case until I give it to you at the very end.

9 The parties have chosen you to examine the matter, to
10 listen to the facts and evidence. It's not gonna be a
11 particularly long trial, and we have confidence that you will
12 follow the terms and conditions of your oath, listen to the
13 facts and evidence, well and truly deliberate, and reach a
14 unanimous verdict in this particular matter.

15 So, with that, Solicitor?

16 MR. DEBUSK: Thank you, Your Honor, may it please the
17 Court?

18 THE COURT: Yes, sir.

19 OPENING BY DEBUSK:

20 MR. DEBUSK: Ladies and gentlemen, let me take you back
21 in time a bit to July 6th of 2018, about 3:45 in the morning
22 before it's even light in the east, dark or nighttime. Ms.
23 Phyllis Grice lived in a trailer off of Green Leaf Drive.
24 It's a small neighborhood off of 544 in South Conway. She
25 lives by herself. She's sitting there with her faithful dog

1 at her side watching television, maybe fighting a little
2 insomnia. She here's some sounds coming from the back porch,
3 back door. At 3:45 in the morning, that's odd, so she goes to
4 investigate. She didn't hear a knock, not the census man
5 coming to ask how many people live there. What she sees is a
6 pry bar coming between the crack and the door. Somebody is
7 trying to jimmy that door open. Somebody breaking the door
8 open in the middle of the night with a pry bar is not there to
9 sell Fuller brushes, not there delivering pizza; they're up to
10 no good, and Ms. Grice knew that. She did what she could.
11 She grabbed her dog, she grabbed her telephone, and she
12 grabbed her perfectly legal self-defense gun, and she ran out
13 the other door, the front door into her front yard. The first
14 thing she does, dial 911. You'll actually hear that tape,
15 hear Ms. Grice talking frightened out of her wits with the 911
16 operator. You'll also hear some shots. Ms. Grice is in that
17 front yard and the person is breaking in her back door ran
18 around the house right towards her with his hands up. She did
19 what any safety-minded person would do, she used that self-
20 defense weapon and she shot him. A while later he comes
21 towards her again, and she shoots again. All this you'll hear
22 on the tape. He retreats towards his car which is parked on
23 the lot next door to hers, an unoccupied lot at that time.
24 She sees him get in the car, pull out, and then promptly get
25 it stuck in the ditch right in front of her. The car stayed

1 at the scene; the defendant left. That's the story that's
2 gonna be before you today, attempted burglary first.

3 The Judge has told you that it's the state's burden to
4 prove the defendant guilty beyond a reasonable doubt. I'm a
5 solicitor, I represent the state, so that's my burden. I
6 don't take it lightly. Because it's my burden, I want you to
7 know exactly what it is that I have to prove to you. Proof of
8 an attempt to unlawfully enter a residence where Ms. Grice
9 lived, with the intent to commit a crime therein, and there
10 has to be an aggravated factor along with that. There are
11 several possible aggravating factors I believe the Judge will
12 tell you about at the end of the case. But the one we're
13 looking at here is the middle of the night, when it was dark,
14 in the nighttime, 3:45 in the morning.

15 Right now is not the time to think about the case, right
16 now is to be an information sponge. Listen to what comes from
17 that stand. This is my opportunity to give you a little
18 roadmap of what you're gonna hear. After you hear about that
19 -- hear that 911 tape, listen to what happened that night, you
20 hear the story directly from Ms. Grice, and you're gonna hear
21 the story from the police, how they found Devin Outen and
22 developed him as a suspect and placed him under arrest.
23 You're gonna hear about a footprint found in the back porch by
24 that door that was -- pictures of that door, broken. You're
25 gonna see a picture or you'll actually have the shoe. You're

1 going to have the shoe to compare to that photograph. You're
2 gonna hear about a tire iron, about that long, dark gray, that
3 was found in the front seat of Devin Outen's car in the
4 passenger seat right beside his hand. That was separate from
5 all the other tools in that car, and how it matched the
6 description of that tool that's coming through Ms. Grice's
7 door at 3:45 in the morning.

8 You're gonna hear about a bullet hole that went right
9 through Devin Outen that identifies him as that person that
10 was shot at that night, and he was captured less than a mile
11 away running from the police in the woods.

12 I want you to listen carefully to all that. It's all
13 coming from the stand, some pictures to look at, a couple of
14 items that you can hold and look at. But, in the end, you're
15 gonna take all that together once the Judge gives you the case
16 and you're gonna decide if the proof is sufficient to hold
17 Devin Outen accountable for his actions. The level of proof
18 is beyond a reasonable doubt; it's a high burden, the state's
19 burden. So, it's important to me and it's important to me
20 that you get some idea at the beginning what that is. The
21 Judge is gonna give you an idea of what reasonable doubt is.
22 He'll give you instruction on the law, but he can't give you a
23 formula. Reasonable doubt comes from you as a cross section
24 of the community.

25 What is this -- what proof of level -- what is this level

1 of proof? It's what satisfies you and leaves you firmly
2 convinced that Devin Outen attempted to break into, to
3 burglarize Ms. Grice's home that morning, 3:45 in the morning,
4 July 6th, 2018.

5 Again, please, for the next afternoon and morning I want
6 you to be an information sponge, just absorb everything that
7 comes from that stand. And in the end, I'm gonna come back
8 and tell you how all that adds up to the defendant being
9 guilty beyond a reasonable doubt.

10 Thank you.

11 THE COURT: All right. Mr. Galmore?

12 MR. GALMORE: May it please the Court?

13 OPENING BY GALMORE:

14 MR. GALMORE: I would like to talk to you all this
15 afternoon about the roles and responsibilities, and that's
16 because everyone in the courtroom has a responsibility, has a
17 job to do regarding this case today.

18 Madam Court Reporter, her responsibility, her job in this
19 case is to keep a record of everything that is said. So, when
20 witnesses take the stand and they're speaking in the
21 microphone, she's taking it down.

22 Your Honor is the judge of the law. I think he commented
23 to you earlier that you are the judge of the facts. What does
24 that mean? Well, for the attorneys that means that if we have
25 any disputes, we say objection, and the Judge decides how the

1 evidence will proceed. He's a like a referee in a sporting
2 event.

3 Our clerk of court, Mr. Adler [sic], gave you all an oath
4 just a few minutes ago. The responsibility of the clerk of
5 court is to keep a record of everything that's presented in
6 court, all the documents, all of the exhibits, things of that
7 nature.

8 You've met your deputies, you've met your bailiffs, their
9 responsibility is your safety and security while you're hear
10 at the courthouse, and to make sure that people don't try to
11 approach you while you're serving jury duty.

12 Now, in discussing all of these roles and
13 responsibilities, I have not mentioned Devin Outen. As you
14 can see, he is not at the table with me today. I can tell you
15 this, Devin Outen, has no responsibility in this case. He has
16 pled not guilty to the charge. Therefore, the responsibility
17 is upon the State of South Carolina to prove the guilt of Mr.
18 Outen beyond a reasonable doubt to each and every one of you.
19 What does that mean? Beyond a reasonable doubt is a legal
20 term, and that is the amount of proof that is required in a
21 case. Now, we have criminal cases and we have civil cases.
22 Construction accident on the home, a motor vehicle accident
23 driving down Highway 17, sometimes you can't resolve it and
24 you have to go to court.

25 Now, the best way to explain this to you is in terms of a

1 factual football field. And we're gonna imagine this as our
2 hundred-yard football field. Now, if we're talking about a
3 civil case as a motor vehicle accident, the prosecuting party,
4 the plaintiff, because it's civil, needs to prove his case by
5 a greater weight or preponderance of the evidence. What does
6 that mean, James? That means imagine they would have to prove
7 their case all the way up to the 50-yard line, and then just
8 one toe across; that's the greater weight of the evidence.
9 You've probably seen this concept before when you look at the
10 scales of justice, the blind lady holding up the scales. The
11 point of the scales is that it's the greater weight; one
12 weighs more than the other and that's the person who wins the
13 case.

14 Now, we have administrative cases also where the standard
15 of proof is slightly more. So, here we are with the greater
16 weight of the evidence; that's a civil case. Administrative
17 case is up hear about 75 percent or so, and that's called --
18 that standard is called clear and convincing evidence, clear
19 and convincing proof. Today's case is a criminal case, and
20 because of that, the standard of proof is beyond a reasonable
21 doubt. Beyond a reasonable doubt does not mean beyond every
22 doubt. That would be foolhardy. I could doubt that there are
23 fish in the Waccamaw River. I could doubt that the sun is
24 gonna come up tomorrow morning. It has come up for the last
25 four billion years, so you all would probably say, James,

1 that's a ridiculous doubt. But in terms of a criminal case,
2 you, members of the jury, have to be firmly convinced of the
3 guilt of the accused. If this were a football game, I would
4 say you have to be convinced that the very next play is going
5 into the end zone. That is the level of proof that is
6 required in these cases.

7 Now, Mr. Outen has said he is not guilty of the charge;
8 and therefore, the burden is upon the state to carry their
9 burden of proof. At this point, I would usually ask members
10 of the jury to keep an open mind and listen to the evidence,
11 but today I'm gonna ask for something different. I'm gonna
12 ask you to focus on a single issue in this case, and it goes
13 like this. Is there any evidence that this man committed this
14 crime? And when I say that, if you listen to what the
15 solicitor says, sounds like there's a lot, but we're gonna dig
16 into the evidence on the witness stand, and I hope that you
17 will agree with me at the conclusion of this case that the
18 evidence does not add up to this man committing this offense.
19 The evidence may be that someone committed this offense. The
20 evidence may be that he committed some other offense, but he's
21 not charged with some other offense. He's not charged with
22 being an accomplice. He's charged with attempting to break
23 into a home, and I challenge the state today to prove it in
24 court.

25 I thank you for your attention. This is not going to be

1 a very long case, but it is a very important case. So, as
2 we're going through the witnesses, we're not gonna try to
3 waste your time, but keep in the back of your mind, what
4 evidence you do hear from the witness stand, ask yourselves
5 this question, does that evidence show that this man, Devin
6 Outen, committed the offense that they are accusing him of
7 doing, attempted first degree burglary. I submit that it does
8 not, and I submit that you will return a verdict of not
9 guilty.

10 Thank you for your time and attention.

11 THE COURT: All right, Solicitor, your first witness,
12 please.

13 MR. DEBUSK: Thank you, Your Honor. The state calls Bill
14 Burhans.

15 THE COURT: All right, sir.

16 Please come around and be sworn, sir.

17 THE CLERK: Please raise your right hand and place your
18 left hand on the Bible.

19 BILL BURHANS, HAVING BEEN DULY SWORN
20 TESTIFIES AS FOLLOWS:

21 THE CLERK: State and spell your name for the Court.

22 MR. BURHANS: My name is Bill Burhans, B-I-L-L, B-U-R-H-
23 A-N-S.

24 THE COURT: Go ahead, sir.

25 DIRECT EXAMINATION OF BILL BURHANS BY MR. DEBUSK:

1 Q: Mr. Burhans, who is your employer?

2 A: Horry County 911

3 Q: What are your duties?

4 A: I'm a quality assurance specialist, and a records
5 monitor.

6 Q: As a records monitor, do you have access to the recorded
7 phone calls that come into 911?

8 A: Yes, sir.

9 Q: And are those often requested by law enforcement in cases
10 that are important?

11 A: Yes, sir.

12 Q: How does 911 maintain the records of the out on calls and
13 other information?

14 A: Every telephone call to 911 and non-emergency is recorded
15 as soon as the call starts ringing on the other end by a
16 secure system. Every radio transmission is also recorded, and
17 then that recording equipment is maintained in a secure,
18 locked room and it's password protected for the records
19 custodian. That's the word, records custodian. So, we have
20 limited access to go in and download that data and pass it on
21 to our law enforcement agencies.

22 Q: Okay. Let me show you what's been marked as State's
23 Exhibit 6 and ask if you recognize this?

24 A: Yes, I do.

25 Q: Have you reviewed that item?

1 A: Yes, I have.

2 Q: Okay. What is it?

3 A: This is a CD with the recording of a 911 telephone call
4 from -- from July 6th, 2018.

5 Q: Do you know what time that call was made?

6 A: The telephone call, 3:48:46 in the morning.

7 Q: 3:48 A.M. and 46 seconds?

8 A: Yes, sir.

9 MR. DEBUSK: Your Honor, we would move State's 6 into
10 evidence at this time.

11 THE COURT: Any objection?

12 MR. GALMORE: No, sir;;, Your Honor.

13 THE COURT: It's in evidence without objection.

14 STATES EXHIBIT NUMBER 6

15 ADMITTED INTO EVIDENCE

16 BY MR. DEBUSK:

17 Q: It's a fair and accurate representation of what was said
18 and by the 911 operator during that call?

19 A: Yes, sir.

20 MR. DEBUSK: May I publish it, Your Honor?

21 THE COURT: Yes, sir.

22 (REPORTER'S NOTE: State's 6 published for the jury. Audio
23 not transcribed herein.)

24 BY MR. DEBUSK:

25 Q: Thank you, Mr. Burhans. Please answer any questions Mr.

1 Galmore may have.

2 THE COURT: Cross-examination?

3 CROSS-EXAMINATION OF BILL BURHANS BY MR. GALMORE:

4 Q: Just a few questions, sir. Just to be clear, you were
5 not the 911 dispatcher that we hear on the tape, correct?

6 A: No, sir; I was not.

7 Q: Okay. You are the records custodian for 911; is that
8 correct?

9 A: Yes, sir.

10 Q: Okay. So, your job is to bring the tape to court and to
11 maintain those records?

12 A: Yes, sir.

13 Q: Okay. Would it be fair to say that you were not present
14 on 544 at Aquila Estates on July the 6th of 2018?

15 A: That is correct.

16 Q: Okay. Now, as for the tape, you can vouch for the
17 accuracy of the tape, correct?

18 A: Yes, sir.

19 Q: Because you were the person that downloaded it and
20 brought it to court, correct?

21 A: I work in that office. I didn't download this particular
22 tape.

23 Q: Okay. So, who downloaded the tape?

24 A: We have records custodians; there are about four of us.
25 So, I don't have the information on who downloaded that tape

1 and turned it over.

2 Q: But there are only four people capable of downloading the
3 tape?

4 A: Yes, sir.

5 Q: And you're one of those four?

6 A: Yes, sir.

7 Q: Okay.

8 A: I'm here to certify the validity of the tape.

9 Q: Right.

10 A: That came from our recording system.

11 Q: Right. You can certify the validity of this tape?

12 A: Yes, sir.

13 Q: Now, you cannot certify the validity of the information
14 that Ms. Grice has given you or given the 911 dispatcher on
15 the tape, can you?

16 A: There's no way to tamper with that information.

17 Q: No. What I'm saying is, you don't know if Ms. Grice is
18 being truthful or not?

19 A: No, sir. I can't testify in what she presented on the
20 telephone recording.

21 Q: Right. You don't know if what's she's saying is accurate
22 or not?

23 A: No, sir.

24 Q: You can only say that this was the recording and you
25 brought it to court today?

1 A: Yes, sir.

2 Q: Okay. I know that 911 takes calls for service usually
3 over the telephone. Do you all receive calls for service by
4 any other means such as Facetime or Facebook live?

5 A: No, sir.

6 Q: No. So, Horry County 911 does not have the ability for
7 the average citizen to Facetime the police department and
8 request assistance?

9 A: We don't have that capability; no, sir.

10 Q: Okay. So, with that said, would it be fair to say that
11 you do not have a video of what happened that night?

12 A: We don't maintain any video recordings at 911.

13 Q: All right. Thank you very much, sir. No further
14 questions.

15 THE COURT: Any redirect?

16 MR. DEBUSK: None, Your Honor.

17 THE COURT: All right, sir. Do you wish the witness to
18 be excused?

19 MR. DEBUSK: I do, Your Honor.

20 THE COURT: Any objection?

21 MR. GALMORE: No, sir.

22 THE COURT: All right, sir. You're released from your
23 subpoena and may go back to your regular duties. Thank you.

24 All right. Solicitor, your next witness, please?

25 MR. DEBUSK: If I may have just a moment to get a couple

1 of exhibits marked, Your Honor?

2 THE COURT: Yes, sir.

3 MR. DEBUSK: The state calls Phyllis Grice.

4 THE COURT: All right. Please come around, ma'am.

5 THE CLERK: Please raise your right hand and place your
6 left hand on the Bible.

7 PHYLLIS GRICE, HAVING BEEN DULY SWORN

8 TESTIFIES AS FOLLOWS:

9 THE CLERK: State and spell your name for the Court.

10 MS. GRICE: My name is Phyllis Grice; P-H-Y-L-L-I-S, G-R-
11 I-C-E.

12 DIRECT EXAMINATION OF PHYLLIS GRICE BY MR. DEBUSK:

13 Q: Ms. Grice, where do you live?

14 A: 2295 Green Leaf Drive, Kingswood II Estates, Conway,
15 South, Carolina.

16 Q: Where is that in Conway?

17 A: It's off 544 behind the Sudz Carwash.

18 Q: Down there in South Conway?

19 A: Pardon?

20 Q: South Conway?

21 A: Yes. We call it South Conway.

22 Q: How long have you lived there?

23 A: Since 1993.

24 Q: Does anyone live there with you?

25 A: No, sir.

1 Q: In the last 10 or 20 years, has anyone lived there with
2 you?
3 A: I had two roommates that helped me move down here from
4 North Carolina.
5 Q: Back in ---
6 A: They're gone.
7 Q: You've been there by yourself for a long time?
8 A: Yes, sir.
9 Q: Did you live there in July 2018?
10 A: Yes, sir.
11 Q: Did you have any pets at that time?
12 A: I do animal rescue, and I had just rescued a puppy, he
13 was a -- he was just a baby, it's a Pit Bull German Shepherd
14 mix ---
15 Q: Uh-huh, (affirmative response).
16 A: --- when this incident occurred, and he protected me. He
17 was just a baby -- just a baby boy.
18 Q: Now, let's look at July 6th, 2018 in the early morning,
19 where were you?
20 A: I was sitting on -- I was on my recliner and I had dozed
21 off. You know, I heard this loud noise in the back on the
22 back porch.
23 Q: Where you were sitting in your recliner, what were you
24 doing?
25 A: The television was on. I had been looking at the 700

1 Club, I'm a member of that, and I had fell asleep, kind of
2 dozed off.

3 Q: Okay. And you were awakened by this sound?

4 A: Yes. It was a lot of noise on the porch and the dog
5 jumped up and he just started barking and growling and ---

6 Q: Did you go to investigate and see what happened?

7 A: I got up and I -- I heard -- I knew somebody was there at
8 the back porch, and they was like messing with the door knob.
9 And I believe I hit the door and said go away, go away, go
10 away or something like that. I don't -- I was really
11 frightened, you know, just ---

12 Q: Were you expecting anybody at that time of the morning?

13 A: No; not really, no.

14 Q: Did anybody have permission to enter your house at that
15 time of the morning?

16 A: No; no, sir.

17 Q: What happened next?

18 A: All I know is that I heard this noise out there and this
19 piece of metal started coming through my back door. It's a
20 trailer door; it wasn't no -- the nice door I got in there
21 now. I seen this metal coming through my door, and the door
22 was opening and ---

23 Q: Where was metal coming through?

24 A: Like -- like around where the doorknob is. I could see a
25 person out there, I mean, my kitchen light was on. I had

1 turned the kitchen light on. A light like where the -- in the
2 hallway. My trailer is 14x70; it's long. But anyway, I seen
3 the man standing there coming in, and he was like making these
4 noises. He was like in a frenzy. He was going uh, uh, uh,
5 like just in a frenzy. And, you know, I'm thinking what's
6 going on, why is this happening to me; you know, why is he
7 trying to get in here to me; and the dog was going crazy; and
8 the door was opening up.

9 Q: I'm gonna show you State's Exhibit 10 and 11 and ask if
10 you recognize what those are?

11 A: Yeah. That's -- this is photos of my back door where
12 he's breaking in.

13 Q: Now, before this incident, when you heard the sound at
14 3:45 in the morning, was your door damaged like that?

15 A: No, it wasn't damaged; it was ---

16 Q: Is that the damage that happened during the incident?

17 A: Yes. But the damage seemed like it got a little worse.
18 When he opened it, it was like I could like I could see him
19 coming in, trying to get in.

20 Q: Did you -- did you see the tool that was being used?

21 A: Yes, that's what scared me. I saw that tool, and I
22 thought, you know, he can get in here and take that tool and
23 just smash my skull with it.

24 Q: Was it coming through the door?

25 A: Yeah, that's when I seen the tool. He was doing like

1 this with it just jacking and ripping the door.

2 Q: So, after you saw this, were you frightened?

3 A: Well, yeah, I was scared. I don't even talk about it too

4 much, I'm afraid I'll start crying.

5 Q: What did you do?

6 A: I had called 911 pretty quick at the first of the deal,

7 and I was talking to them and it's like ---

8 Q: So, you had your phone handy?

9 A: Yeah, I had it. I think it was a flip phone; yeah.

10 Q: Did you have anything else; did you have a weapon?

11 A: Yeah, I have a gun. I had a .38 special snub nose.

12 Q: Uh-huh, (affirmative response). And so, did you have

13 that with you after this happened?

14 A: I got it during that time period. I went and got it. I

15 didn't -- I wasn't ---

16 Q: You weren't carrying it?

17 A: --- just having it laying in my lap or nothing.

18 Q: You had to retrieve it?

19 A: I had to get it.

20 Q: So, you retrieved it from a storage place?

21 A: I do what?

22 Q: You retrieved the gun from where you had it stored?

23 A: I got the gun before he -- you know, when he was coming

24 into the trailer, I knew I got to do something, there's

25 somebody there and this man is coming in on me; I saw him.

1 Q: So, you got your phone, and you got your gun. Did you go
2 anywhere, or did you stay in the trailer?

3 A: When I saw the weapon coming -- the piece of metal, it
4 was like a gray looking thing, long, when I saw that coming
5 in, it's like I heard a voice in my head that said get out.
6 It's like something said get out, get out now. And I went out
7 the front door and the dog went with me.

8 Q: So, he was at the back door.

9 A: He was at the back door. I went through and I went out
10 the front door and I had -- I had the gun there and I was
11 still talking to the 911 operator.

12 Q: Let me show you State's Exhibit 7 and ask if you
13 recognize that?

14 A: That's my home and my car and the palm tree.

15 Q: That is your house?

16 A: Yes, sir.

17 Q: There's a door visible; is that your front door or your
18 back door?

19 A: That's my front door.

20 Q: So, that's the door you went out of?

21 A: That's my -- yeah, I went out that door.

22 Q: Okay. Now, let me show you State's 8 and 9 and ask if
23 you recognize these?

24 A: This is the back of my trailer and the back deck porch,
25 and that's the door he broke through, tore out.

1 Q: The door you referred to as the back door?

2 A: Yeah, the back door. That's where he came in at.

3 MR. DEBUSK: Your Honor, at this time the state would
4 offer 7, 8, 9, 10 and 11 into evidence.

5 THE COURT: All right. Any objection?

6 MR. GALMORE: No, sir; no objection.

7 THE COURT: All right. So, that's State's 7 through 11 -
8 are ---

9 MR. DEBUSK: Correct, Your Honor, 7 through 11.

10 THE COURT: -- into evidence without objection.

11 STATE'S EXHIBITS NUMBER 7, 8, 9, 10, AND 11

12 ADMITTED INTO EVIDENCE

13 MR. DEBUSK: Your Honor, may I publish?

14 THE COURT: Yes, sir.

15 BY MR. DEBUSK:

16 Q: So, when did you call 911?

17 A: Whenever I first heard the noise and I then I -- when I -
18 - I seen him coming in, but when he first -- I knew someone
19 was out there on the porch, and they shouldn't be out there at
20 that time of morning. But, when I heard the noise, I knew
21 somebody was breaking in my home. First, it was like the
22 doorknob, and then it's like the weapon is what scared me the
23 most, seeing the weapon come through, that piece of metal. I
24 call it a weapon, but I guess it was a piece of metal just
25 coming through the door. That's what really scared me.

1 MR. DEBUSK: Court's indulgence, Your Honor?

2 THE COURT: Yes, sir.

3 STATE'S EXHIBIT NUMBER 6

4 MARKED FOR IDENTIFICATION

5 BY MR. DEBUSK:

6 Q: Let me show you what's been marked as State's Exhibit 12
7 and ask you if that looks familiar to you?

8 A: All I know was it was metal. It looked bigger to me at
9 the time than that, but that's -- it was shaped like that, and
10 he was -- all I know it was just -- I don't know how to put
11 it.

12 Q: In the door?

13 A: He was just a frenzy -- he was in a frenzy trying to get
14 that door open.

15 MR. DEBUSK: Your Honor, this is subject to further
16 authentication.

17 THE COURT: Yes, sir.

18 BY MR. DEBUSK:

19 Q: What type of phone were you using?

20 A: What type of ---

21 Q: Phone.

22 A: It was a flip phone.

23 Q: Okay. So, you're talking to 911, where did you go?
24 Where were you standing in your yard?

25 A: I was standing beyond the palm tree, and I could see the

1 driveway. You know, I wasn't under the palm tree, I was
2 away from it. The dog was -- the dog was chasing him in the
3 back and, you know, I believe the dog -- I know the dog went
4 after him.

5 Q: So, you were in your front yard just beyond the palm
6 tree, talking on the phone to 911.

7 A: I seen the dog go around the back. So, I know the dog
8 took after him. He was just a puppy, you know -- I mean, he
9 weighed 45 pounds.

10 Q: What happened next?

11 A: He was coming around and ---

12 Q: Who was coming around?

13 A: This man. This man that was breaking in on me, this
14 black man, and he -- I think that's -- I had the gun like
15 this, and I don't know, it seemed like I said I'll shoot you
16 or something or I'll shoot you maybe, and then he just -- he
17 kept coming. And I think there was one shot fired and it
18 seemed like -- it seemed like for a minute he stopped. I
19 think the dog was there coming around at him or -- I don't
20 know. It was just -- all I know is he started coming toward
21 me. The second shot is when -- then I fired it. He was
22 coming at me like this to grab me around the neck, and he was
23 getting closer and closer and closer.

24 Q: Did he have his arms outstretched?

25 A: He had his heads out like I knew he was gonna grab me.

1 Q: How far was he from you when you fired?
2 A: Go back further. About that far.
3 Q: About that far?
4 A: About that far.
5 Q: And he's coming towards you?
6 A: Yes, with his hands out. He was -- he was gonna grab me.
7 Q: Walking, running?
8 A: He was running. He was running.
9 Q: When you shot, what did he do?
10 A: He stopped. He just stopped suddenly, and I didn't know
11 why he stopped. I mean, I didn't know if I had -- I never
12 shot nobody before, I didn't -- he stopped and he hesitated
13 like, and then he turned around and went back toward the
14 woods.
15 Q: Uh-huh, (affirmative response).
16 A: There's woods behind my home, and like, you know, he was
17 coming in -- he was parked at this empty lot, and I thought he
18 was coming in around the woods. So, but that's -- he just ---
19 Q: At this point, he was coming at you and you shot at him
20 and shot at him again. What happened after that?
21 A: He went into the woods. And then I went out toward the
22 road, because I didn't know what he was -- I didn't know what
23 to do, and I'm still talking -- I'm still talking -- luckily,
24 I had the 911 operator the whole time hearing everything,
25 thank God. And there was a car parked in this empty lot

1 beside me. There was a old, abandoned trailer there, and
2 that's ---

3 Q: Was this empty lot directly next to yours?

4 A: It's right beside my home and it's -- there's no lights
5 there. And he -- he got into the car and was -- he pulled in
6 the driveway there and he got into the car and he backed out
7 and somehow he got into that ditch all marred up, and then
8 he's spinning the wheels to the car and couldn't get out.

9 Q: Let me show you what's been marked as State's Exhibit 13
10 and ask if you recognize that.

11 A: Yeah, that's the car. You can see how you got it like
12 sideways and tore that ditch all up.

13 MR. DEBUSK: Your Honor, the state would offer State's 13
14 into evidence at this time.

15 THE COURT: Any objection?

16 MR. GALMORE: No objection, Your Honor.

17 THE COURT: All right. It's in evidence without
18 objection.

19 STATE'S EXHIBIT NUMBER 13

20 ADMITTED INTO EVIDENCE

21 MR. DEBUSK: Your Honor, may I publish it?

22 THE COURT: Yes, sir.

23 BY MR. DEBUSK:

24 Q: What happened after he ran the car into the ditch?

25 A: Well, the gun went off, again. I didn't think I shot the

1 gun. The dog jumped on me, and I was shaking so bad -- oh, I
2 dropped the gun. Maybe I pulled the trigger and shot; I
3 thought I dropped it, though.

4 Q: Uh-huh, (affirmative response).

5 A: But the dog was running around, and I didn't -- I was
6 trying to get a hold of the dog, because I didn't want him to
7 go to the car after the man, because I thought, well, he might
8 hurt my dog. I don't know. He was a -- he's a good-sized
9 man; he's not no little fellow.

10 Q: When you were standing there next to the palm tree, you
11 fired two shots at him?

12 A: Yes.

13 Q: There was a third shot, but you say that wasn't
14 intentional. That third shot, you did not mean to fire?

15 A: The last shot I didn't mean to fire. The first shot ---

16 Q: The first one you did?

17 A: The first shot, I did. The second -- he was coming at
18 me. And then the second shot, he was getting really close and
19 that's when he had his hands -- he was gonna grab me by the
20 neck.

21 Q: Uh-huh, (affirmative response). Now, when you saw him
22 get into the car and pull out of the driveway, how far is that
23 driveway from where you were standing?

24 A: Oh, gosh, it's like back where the seats are.

25 Q: All those on the end there?

1 A: It was -- yeah, toward, you know, it was a good -- yeah,
2 to the end to the wall, at least to the wall.
3 Q: But the car had lights on, and you could see it?
4 A: He had turned the lights on, yeah.
5 Q: Now, when the car went in the ditch, were you there
6 looking or you were watching?
7 A: Yeah, I didn't know what to do. I mean ---
8 Q: Did you see anybody get out of the passenger seat?
9 A: No, it was -- the only -- he was the only person there.
10 Q: Okay. That's what I was gonna ask you next. Did you see
11 anyone else there that night?
12 A: No, no.
13 Q: Now, it was pretty dark out there because this is 3:45 in
14 the morning, right?
15 A: Yes, sir.
16 Q: Were you able to recognize it or see details of his face
17 in the dark like that?
18 A: I saw his face when he was at the back door because
19 lights were on, and he had -- he had on dark clothes, but I
20 saw his face. And, I mean, I seen him good because, you know,
21 he was opening the door, and the light was hitting him and I
22 was looking, but then -- I just knew I had to get out. I
23 couldn't stay in there waiting for him to get in to me.
24 Q: Did you see him run away from the car after it went in
25 the ditch?

1 A: I'm having to think about that. I believe he got out of
2 the car, and I'm thinking he headed back toward the woods,
3 because there's woods behind that trailer, too. And there's
4 another bigger mobile home than mine, longer, closer to that
5 ditch.

6 Q: But did you see where he went?

7 A: Where he went?

8 Q: Yeah.

9 A: I thought he went toward the woods, back in the ---

10 Q: You couldn't see where -- you couldn't point to the
11 police that's where he is?

12 A: No, I didn't ---

13 Q: Now, you were on the phone with 911, right?

14 A: Yes.

15 Q: Did the police come?

16 A: They got there, but it kind of took a while it seemed
17 like. It might be because I was so scared and frightened that
18 it seemed long. I don't know.

19 Q: When they came, did you give them your gun?

20 A: I put -- it was a woman. I put the gun down on the
21 ground, and I went like that so she could see my hands,
22 because they were afraid I was gonna shoot them.

23 Q: When the police got there, did you tell them your story?

24 A: Yes.

25 Q: Tell them what happened?

1 A: Yeah, I had to -- seemed like I wrote something. I wrote
2 it down, and it was two of them, and I got in the car. It was
3 the woman first that told me to get in the car, and I was
4 concerned about the dog. He was running around her car,
5 scratching and, you know.

6 Q: The woman you're talking about, that was a police
7 officer?

8 A: A police lady, yeah. A police lady.

9 Q: And it was your dog scratching, wanting to get in with
10 you?

11 A: She said he's tearing my car -- tearing my vehicle up
12 trying to get to you, so she said let's let him in, you know.

13 Q: So, you let the dog in there with you?

14 A: Yeah.

15 Q: Okay. Now, tell me about the door, the door we saw the
16 pictures of with the -- was there damage to it? The damage
17 shown in State's 10 and 11?

18 A: Uh-huh, (affirmative response).

19 Q: Did you have to have that door replaced?

20 A: Definitely. I mean, it was -- before the whole thing was
21 over with, it was like hanging. It was just like hanging.
22 Anybody could've come in it. I couldn't lock it no more.

23 Q: It wouldn't close anymore?

24 A: No, it wasn't closable. It was ---

25 Q: And that was -- all that damage was done during that

1 incident, correct?

2 A: Yes. It wasn't -- it wasn't like that before, I mean.

3 Q: Let me ask you a couple of things about your back yard.

4 Now, when your -- let's refer back to the photographs. When

5 you're standing facing your deck there ---

6 A: Yes, sir.

7 Q: --- what's at the end of the yard next to it?

8 A: Next to the deck?

9 Q: In the next photo?

10 A: There's a fence, a big fence.

11 Q: Is it a high fence?

12 A: A high fence, and then I got my shed back there.

13 Q: Now, what's behind your yard -- behind your shed?

14 A: Just woods, woods.

15 Q: Is there a swamp back there?

16 A: There's an area that is swampy like to the -- it's like
17 water and a little -- it's swampy looking a little bit.

18 Q: What about the other end of the yard, what's there?

19 A: It's just woods. I had a big dog lot in there at one
20 time, and it had grewed up with woods.

21 Q: It's grewed up now. The only -- is it fair to say the
22 only easy way out was to run around the end of the trailer?

23 A: Yeah, right down through the driveway or back in the
24 woods.

25 Q: So, let's just go over it just a little bit again.

1 You're sitting in your recliner, dozing off, and you hear a
2 sound.

3 A: Yes.

4 Q: How far away was your recliner from where the door that
5 is being broken was?

6 A: It's in the living room, and then there's the kitchen,
7 and then there's the door and there's a hallway. It's not
8 that far.

9 Q: Uh-huh, (affirmative response). After seeing what was
10 going on, you called 911 and headed to the front yard,
11 correct?

12 A: Right.

13 Q: And all that was captured on the 911 recording?

14 A: The 911 operator, she stayed with me through all of it.

15 Q: Uh-huh, (affirmative response). And you did see that
16 long gray tool coming through the door?

17 A: That's what frightened me the most, I think, it just --
18 I'm thinking this man is really -- this man that I'm seeing,
19 he's getting in here for me, and I didn't know why, you know.
20 I mean ---

21 Q: And then you saw him, after the shooting, you saw him get
22 in the car on the lot next door?

23 A: Yes.

24 Q: And then get that car stuck in the ditch?

25 A: Yes.

1 Q: And that car stayed there until the police got there?

2 A: Yes, yeah.

3 Q: That car stayed there.

4 A: I guess it stayed there until it was towed out, pulled
5 out.

6 Q: Okay. Thank you. Please answer any questions defense
7 might have.

8 A: Okay.

9 THE COURT: Cross-examination?

10 CROSS-EXAMINATION OF PHYLLIS GRICE BY MR. GALMORE:

11 Q: Ms. Grice, I'd like to begin by recognizing your bravery
12 in this situation?

13 A: Thank you.

14 Q: I do have a few questions for you, ma'am.

15 A: Okay. That's fine.

16 Q: Let's begin with the 911 tape. Did you hear it with us
17 just now in the courtroom a few minutes ago?

18 A: I heard it. It sounded kind of blurry to me, but I heard
19 it.

20 Q: Yes, ma'am.

21 A: I mean, I was there doing it, so ---

22 Q: That was my question.

23 A: I should be ---

24 Q: That was you on the tape?

25 A: -- I should familiar with it; it was me doing it.

1 Q: Okay. That was you on the tape?

2 A: Definitely, a hundred percent. I wish it wasn't, but it

3 was.

4 Q: I understand. Did you hear the dispatcher tell you to go

5 back into the house?

6 A: I don't think so.

7 Q: You don't remember that part on the tape?

8 A: I don't remember that.

9 Q: That's fine.

10 A: I think -- I think -- I thought he got into my house.

11 Q: Okay. Well, let's talk about that. Did he get into your

12 house or not?

13 A: I think he got in, because the door was -- you know, I

14 seen him in the door, and I think he got in and when the

15 police got there, they thought he was in the house. They all

16 went through my mobile home. They thought he was in there,

17 and I was put in the car by the police lady.

18 Q: Do you think the police might've been looking for

19 somebody else when they checked your house?

20 A: No, I just called -- I'd called them about what was

21 happening.

22 Q: Well, when the police got there, he had already been

23 shot, right? Yes?

24 A: Yeah.

25 Q: Shot at a couple of times, yes? And he had gotten into

1 the car and attempted to leave and crashed it into the ditch.
2 Now, from there, he got back out of the car, right?
3 A: He would've -- yeah, he got out of the car.
4 Q: Okay. And where did he go?
5 A: I didn't -- I was in the road. I didn't go to the car
6 and watch him.
7 Q: Okay. Did you see him go into your house?
8 A: He would've had to went in through the back door then,
9 but the police went in there and searched the trailer.
10 You can ask them.
11 Q: Right.
12 A: They seemed to think he was there, but I ---
13 Q: You're the person on the witness stand, so I have to ask
14 you.
15 A: I know, but I'm telling you, you can ask them that were
16 there what they did.
17 Q: Okay. Did you see anyone go into your house other than
18 the police?
19 A: No. But I -- I went out the door, but I know he was
20 getting in because that's when I saw him ---
21 Q: Right.
22 A: --- at the door, and the door was open -- you know, it
23 was opening from the side he was prying open.
24 Q: Yes, ma'am. You saw the pry bar coming through your
25 door?

1 A: And then I could see it opening up, and then I saw him.
2 But, I mean, I don't know ---
3 Q: Okay.
4 A: I wasn't gonna stay in the mobile home with him letting
5 him in there with that metal in his hand. You know, it was
6 just me and the dog.
7 Q: Well, I'm just trying to get some clarification?
8 A: I mean, when this incident happened -- I'm 72 years old.
9 Q: Yes, ma'am.
10 A: I was 71 years old. I mean, what am I -- I'm a senior;
11 what am I supposed to do?
12 Q: Well, I'm just trying to figure out ---
13 A: I know.
14 Q: --- what you did see and what you didn't see?
15 A: Okay. I'm sorry.
16 Q: No, you're fine. And I believe you testified that you
17 saw the crowbar coming through the door?
18 A: Yes, sir.
19 Q: So, as you were inside the house sitting in your recliner
20 watching the 700 Club, you could clearly see some type of
21 crowbar coming through your door?
22 A: Yeah, after I got ---
23 Q: So, at least some portion of the bar was inside your
24 house, right?
25 A: Yes.

1 Q: Okay. Now, was the suspect able to get the door opened
2 all the way?

3 A: I think he opened it all the way, but I went out the
4 door. I seen him, and then I said I'm not -- I left.
5 Something just come in my head and said get out. It's like I
6 heard this voice.

7 Q: Yes, ma'am. Well, I'm trying to get a picture in my
8 mind. Did the suspect open the door and you're able to sit in
9 your recliner and look and see a person standing on your
10 porch; was the door wide open?

11 A: No, no. I had got out of the recliner.

12 Q: Okay. Yes.

13 A: I couldn't have seen none of it. I couldn't have seen
14 him -- I couldn't have seen him in the door if I would still
15 have been in the recliner, because it was in the living room
16 and the door is at the kitchen and the back porch. So, no way
17 I could be in the recliner seeing what's going on behind me.

18 Q: Well, let me try it another way. Let me hand you what's
19 been marked as State's Exhibit Number 9 and ask you if you
20 recognize that?

21 A: Yes, sir.

22 Q: That's the back porch of your house?

23 A: Yes, sir.

24 Q: Okay. Now, you see the back door on the house?

25 A: Sure.

1 Q: Okay. Could you tell the jury if the door was open
2 completely or partially or at all during this encounter?
3 A: It was open partially.
4 Q: How far would you say the door was open?
5 A: About this -- enough where I could see him.
6 Q: Okay. So ---
7 A: I could -- I could see him, and I saw -- you know, and as
8 soon as I saw him, that's when -- it's like get out, get out.
9 You know, because ---
10 Q: Okay. So, the door was open -- was partially open?
11 A: His plan -- he was coming in. I don't know what he ---
12 Q: You're fine.
13 A: I don't know why he was coming in, really. I just know
14 he was coming in, and it was me there by myself, and it -- I'm
15 not a wealthy person. I don't know what he -- I don't have
16 nothing a man would want to rob. I don't have no tools.
17 Q: Now, when -- when you say you were able to see him
18 because the door was partially open, did you have lighting out
19 there like on your back porch?
20 A: He undid the bulb and made it dark, but I had the kitchen
21 light on, and I had turned on the hall light, and there was a
22 light in the living room, too. So ---
23 Q: So, there is a light on the outside back porch, correct?
24 A: Yes, sir.
25 Q: And that light would usually be on at 3:30 in the

1 morning?

2 A: Always, yes; yes.

3 Q: Yes, ma'am. But on this occasion, the light was off and

4 you said unscrewed, partially unscrewed?

5 A: Yeah. The bulb was taken out.

6 Q: Did you see who partially unscrewed your light bulb?

7 A: I couldn't have seen it.

8 Q: Okay. So, you don't know who unscrewed the light bulb?

9 A: No. I just felt like it was the person trying to -- that

10 I saw there at the door coming in.

11 Q: I get that, but ---

12 A: I didn't see but one person. I mean, I ---

13 Q: I mean, are you assuming that the person you saw is the

14 person that unscrewed your light bulb?

15 A: Are you thinking he had some -- that he -- I don't know,

16 yeah, I think it would be him.

17 Q: Okay. Now, I get that you're assuming that that's the

18 person that unscrewed your light bulb. Did you see anyone

19 unscrew your light bulb?

20 A: No.

21 Q: No. Okay. But you think it was him, correct?

22 A: I think it was Mr. Outen.

23 Q: Yes, ma'am. All right. Now, let's talk about the 911

24 tape. Do you recall the 911 dispatcher telling you to go back

25 into the house?

1 A: I can't remember her say -- anybody -- her saying that,
2 because I wasn't gonna go back in there.

3 Q: Okay. Because you thought there might be another person
4 in there?

5 A: If she'd have said to me, I would've said no.

6 Q: Yeah, and you said on the tape, no, there might be
7 another person in there; do you recall saying that on the
8 tape?

9 A: No, I would've said -- I think I said, no, I'm not going
10 in there. I wouldn't go back in the house because I knew that
11 -- I just seen him. I don't know -- he's the only one I seen.

12 Q: Do you recall saying on the tape that the reason why you
13 didn't go back in the house is because you thought it might be
14 another person in there?

15 A: No. I don't recall saying the exact words.

16 Q: Yes, ma'am.

17 A: I was so upset, I don't recall much of nothing, but ---

18 Q: Would it be fair to say that what was said on the 911
19 tape is accurate?

20 A: Yeah, it happened, I mean ---

21 Q: Okay. So, if you don't recall saying that now, and I
22 understand that, but if it's on the tape, would you say that
23 it was untrue?

24 A: I'm saying that I just thought it was one person there,
25 but I don't know if I -- I might've said that on the tape, but

1 I don't remember saying it.

2 Q: Yes, ma'am.

3 A: I was very -- I was upset. I mean, you know, it's -- I
4 never had an experience like this before in my life.

5 Q: Ms. Grice, do you have home surveillance?

6 A: No, sir.

7 Q: All right. And as I understand it, once the person
8 started trying to come into the house, you went out the front
9 door?

10 A: Yes, sir.

11 Q: Okay. And you had your gun?

12 A: Yes, sir.

13 Q: And you had your cell phone?

14 A: Yes, sir.

15 Q: And you had your dog?

16 A: Yes, sir.

17 Q: Okay. And you went out the front door, yes? I think you
18 testified that the dog went around back?

19 A: The dog went after the guy. He went back -- he circled
20 like, you know, I seen him go to the left and go around the
21 trailer.

22 Q: Uh-huh, (affirmative response).

23 A: And I thought, you know, oh, God, he's going after this
24 man.

25 Q: Okay. So, just to try to put it in chronological order,

1 you come out of the house with the dog and you're in the front
2 yard, and then the dog runs around toward the back of the
3 house; is that correct?

4 A: That's correct.

5 Q: Okay. Did you go around to the back of the house?

6 A: No.

7 Q: No?

8 A: No.

9 Q: Now, I've seen one or two trailers in the past. Is your
10 house -- is it possible to go around either side of the house?

11 A: Yeah, you could go around either side.

12 Q: Okay. So, if there was a second person, they could've
13 went in a different direction?

14 A: That could be possible if there would've been a second
15 person.

16 Q: Okay. Now, you testified that Mr. Outen was coming
17 towards you, and I think you said you shot him when he was
18 about this far away from you; is that right?

19 A: Yeah, he was running, running toward me.

20 Q: He was running. Was he attempting to talk to you; was he
21 saying anything?

22 A: I don't remember me and him having any conversation
23 except me saying -- telling him to go away. I think I said
24 I've got a gun, I'll shoot you; now go away, go away.

25 Q: Okay. If he was talking to me, I didn't hear him say

1 nothing, because I just seen his hands outstretched, and I
2 just felt like he was going to grab me by the throat.

3 Q: Yes, ma'am. But he was a distance away at the time that
4 the shot was fired?

5 A: Yeah, but he was running toward me.

6 Q: I understand, yes, and I don't expect you to be
7 assaulted, you know, you -- like I said, you handled the
8 situation appropriately.

9 Were you able to pick Devin Outen out of a lineup?

10 A: I could pick him out of a lineup, I believe, if you want
11 me to.

12 Q: Did the police bring you a lineup and ask you to pick a
13 suspect?

14 A: No, I don't recall that; no, sir.

15 Q: Okay. Do you know what I'm talking about when I say a
16 lineup? I'm not trying to confuse you?

17 A: I've seen it on television; I've never done it.

18 Q: Yes, exactly that. They'll put several pictures
19 together, like six pictures, and bring them to you and ask you
20 if you recognize the person involved. They did not do that in
21 this case?

22 A: Well, they caught him.

23 Q: Okay. But did the police ---

24 A: They had him. I went to -- when he was at J. Reuben
25 Long, I mean, me and one of my girlfriends went there and I

1 looked through like this television and I saw him, but I told
2 her, I said that's the guy; that's him, that's the one that
3 was at my trailer.

4 Q: Yes, ma'am.

5 A: But that's what I told her, but I mean ---

6 Q: I understand that. Again, my question is, Did the police
7 bring you a six-pack lineup and ask you to if any of these
8 people in the picture is the suspect?

9 A: I don't believe that. I don't remember that.

10 Q: Okay. They did not?

11 A: I didn't attend no lineup situation.

12 Q: All right. When you talked to the dispatcher for 911,
13 did you tell her, I can identify him; I saw his face?

14 A: I don't remember telling her that.

15 Q: Okay. I think you testified that you gave a written
16 statement also. Did you put in your written statement that
17 you could identify the suspect?

18 A: If I -- if I -- you know, probably, because I remember.
19 I remember what he looked like, and I remember seeing him.

20 Q: You didn't happen to take a picture of the suspect with
21 your phone, did you?

22 A: This was a flip phone.

23 Q: Yes, ma'am.

24 A: I didn't -- no. There was too much going on to think
25 about taking pictures.

1 Q: All right. I understand that. Now, you said you didn't
2 recall him saying anything to you, right?

3 A: Not when he was running to me with his arms outstretched
4 and me pointing a gun at him, no.

5 Q: Okay.

6 A: He was a distance -- there wasn't no means or way of
7 conversation. I don't ---

8 Q: Well, my point is you would not be able to identify a
9 suspect by voice because you didn't hear him talking to you,
10 correct?

11 A: Not that night, no. He ---

12 Q: Okay.

13 A: --- he was coming toward me, you know, and look, I had to
14 protect myself. I had no choice.

15 Q: Yes, ma'am. Could you recognize the suspect by his
16 voice?

17 A: I can only recognize him by how he looks and all, his
18 face and his features and everything. I mean, I just -- it's
19 like, you know, there was no time for a big conversation with
20 me and him for any reason. It was just ---

21 Q: Okay. So, let's go back to recognizing him. The police
22 did not give you a six-pack lineup and ask you identify a
23 suspect, correct?

24 A: No.

25 Q: So, you were not asked to recognize him visually, I

1 recognize him, I see a picture of him, correct; that didn't
2 happen?

3 A: No.

4 Q: Okay. Now, we're going to audio. Could you recognize
5 the suspect by his voice?

6 A: We didn't have no big conversation that night. I don't
7 think so.

8 Q: Yes, ma'am. So, did the police attempt to ask you to
9 recognize him by his voice? No?

10 A: No, the police -- all I know is I shot him, they caught
11 him, and then they had to take him to the hospital, and that's
12 how it happened, and that's how it went down. That was it.
13 I don't ---

14 Q: Did you approach the car when it ran into the ditch?

15 A: No, no, I didn't -- I wasn't gonna get up around him.

16 Q: Okay. And you said you don't know what direction he ran
17 off after crashing the car into the ditch?

18 A: I'm assuming he went back toward the woods. I don't
19 remember seeing him run down the middle of the road. I was at
20 the road.

21 Q: And would it be fair to say that you do not recall seeing
22 a second person?

23 A: All I know is he had to've got out of the car because it
24 quit running and it was in the ditch sideways, and he had to
25 have got out of the car somehow. And I stayed in the middle

1 of the road because the 911 operator kept telling me that the
2 law was on the way; the law is on the way. You know, put the
3 gun down, and I just stayed and did what she said, and I was
4 trying to calm the dog down, because I didn't want him going
5 up to the car or anything. This is, you know, what's done is
6 done. You know, I'm waiting on the police. I just want the
7 police to get there; that's all I want.

8 Q: Thank you, ma'am. No further questions.

9 A: Okay.

10 THE COURT: Redirect?

11 MR. DEBUSK: Thank you, Your Honor.

12 REDIRECT EXAMINATION OF PHYLLIS GRICE BY MR. DEBUSK:

13 Q: Now, did you see whether he got in the house or not, or
14 did you leave before that happened?

15 A: I ran out the door cause I knew he was coming in. I
16 didn't -- I seen him at the door opening it. I seen his face.
17 I seen him, but like I said, I heard this -- this sounds
18 crazy, but I heard a voice in my head that said get out, get
19 out, and I got out, and I know -- I thought he got in the
20 house. I felt like he got in the house.

21 Q: But you don't know whether he got in the house?

22 A: I'm not a hundred percent sure.

23 Q: Okay. The person you saw at your door with the bar
24 breaking your door open, is that the same person you saw at
25 the bond hearing?

1 A: Yes. I mean, I knew instantly because I told my
2 girlfriend, I said that's the man, that man right up there.
3 Q: Same face you saw in your kitchen light as that door was
4 coming open?
5 A: Yeah, I saw him. I saw his face. I saw him. It was
6 happening fast, but I had my glasses on; I saw him.
7 Q: Let me ask you, when you left the -- when he got the car
8 in the ditch, did you see where he went?
9 A: No, I -- he was in the car and the car was sitting
10 sideways in the ditch, and he opened the door.
11 Q: He could've gone into the woods?
12 A: I think he went toward that house through the woods. I
13 don't remember him walking down the middle of the road.
14 Q: Could he have doubled back and gone back into your house?
15 A: Well, he could've.
16 Q: So, you weren't going back in that house?
17 A: No, I'm not going back in. I'm staying -- the 911
18 operator saying put the gun down, put the gun down, quit
19 shooting, and she's saying the police are on the way, and I
20 was in the middle -- I was in the road, the dog was with me,
21 and I'm waiting on the police.
22 Q: Let me ask you a very, very focused question. Did you
23 not want to go in the house because you were afraid that that
24 person who was breaking into your house might've been in
25 there, or did you think there were other people there?

1 A: I thought it might -- I don't know where the man that got
2 out of the car went. He could've went back in the house.

3 Q: So, he could have back in?

4 A: He could've went back in the house; he could have went in
5 the woods. I wasn't going to explore; I'm waiting on the
6 police to find him.

7 Q: Was it your conclusion that the safest place for you at
8 that minute was waiting for the police out by your driveway?

9 A: Yes. Yeah, I'm not -- I ran out of the house. I ran out
10 of my home because he was coming in it. I didn't -- I don't
11 want to go back where he might be. I mean ---

12 Q: Did you see any sign of another person other than that
13 person who you saw breaking your door open and who you shot,
14 was that the same person; was that that same person, the
15 person breaking your door and the person you shot at?

16 A: I just saw one person. I never saw another person. I
17 swear to God, I never saw another person. I just saw this one
18 person.

19 THE COURT: Anything else?

20 MR. DEBUSK: Just one more question.

21 BY MR. DEBUSK:

22 Q: You testified to this already, but let me make clear,
23 when that person was breaking your back door open, your T.V.
24 was on, right?

25 A: Yes.

1 Q: And your kitchen light was on. And did you speak to him
2 through the door and tell him to go away; did you testify to
3 that?

4 A: Did I do what now?

5 Q: When you went to the back door and he was breaking it or
6 rattling the doorknob, did you say go away?

7 A: Go away. I said go way. I said I've got a gun and I
8 will shoot you. I did say that. I said I've got a gun now go
9 away, go away.

10 Q: So, he would have known someone is in there?

11 A: Yes.

12 Q: And that was before he started prying the door open?

13 A: Yeah, because I heard noise at the door. I heard the
14 noise.

15 Q: The rattling of the doorknob.

16 A: Yeah, the doorknob. He was like trying to open the door.
17 I knew someone was there and I heard -- I heard the noise from
18 the back porch. I mean, I could hear him on the -- a person
19 on the back porch. My back porch has got some boards, that
20 you know, he could've fell through the boards.

21 Q: Kind of a rickety back porch?

22 A: Yeah, it needs fixing. You know, it needs some mending.

23 Q: But your light was on, your T.V. was on, and you spoke to
24 him through the door?

25 A: Yes.

1 Q: He should've known you were there?

2 A: He had to know, and then I hit on the door like this and
3 said go away. I hit the door.

4 Q: Thank you very much. Oh, you actually hit the door?

5 A: I hit at the door. I said go away, go away.

6 Q: Thank you.

7 THE COURT: Anything else, Mr. Galmore?

8 RECROSS-EXAMINATION OF PHYLLIS GRICE BY MR. GALMORE:

9 Q: Just briefly, Ms. Grice. Do you have a concealed weapons
10 permit?

11 A: No, no.

12 MR. GALMORE: Nothing further, Your Honor.

13 THE COURT: All right, ma'am, you may step down. Thank
14 you.

15 MR. DEBUSK: Your Honor, may we approach for a moment?

16 THE COURT: Just one second.

17 MR. DEBUSK: Yes, sir.

18 BY THE COURT:

19 THE COURT: All right. Madam Forelady, ladies and
20 gentlemen of the jury, we're going to take a short break. Go
21 to your jury room. Remember don't talk about the case until I
22 give it to you at the end.

23 Thank you very much.

24 (REPORTER'S NOTE: Jury exits courtroom @ 3:21 p.m. The
25 following takes place outside the presence of the jury.)

1 THE COURT: Yes, Solicitor?

2 MR. DEBUSK: Your Honor, I was just gonna tell you that
3 because of a doctor's appointment, the next witness is
4 unavailable until first thing in the morning. So, at this
5 time, we would ask to -- the rest of our witnesses, there is
6 five more and they can all go in the morning.

7 THE COURT: All right. Very good. All right. So, you
8 want to break for the day and then start again tomorrow
9 morning?

10 MR. DEBUSK: That would be my request, Your Honor.

11 THE COURT: All right. Any problem with that, Mr.
12 Galmore?

13 MR. GALMORE: No, sir, Your Honor.

14 THE COURT: That would work with your schedule?

15 MR. GALMORE: Yes, sir.

16 THE COURT: All right. Very good.

17 All right. We'll take a short break and then -- we'll
18 stop, but we're gonna take a short break and then I'll think
19 about whether I'm going to call them in or just tell them to
20 go home and come back in the morning.

21 MR. DEBUSK: Yes, Your Honor.

22 THE COURT: All right.

23 MR. DEBUSK: Thank you.

24 THE COURT: Thank you very much.

25 **RECESS - 3:22 P.M.**

*****OFF THE RECORD*****

ON THE RECORD - 3:33 P.M.

THE COURT: All right, counsel, what I'm gonna do is call the jury in and tell them that -- that y'all have requested that we stop for the day and finish up tomorrow. There's no issue that we would not finish tomorrow, correct?

MR. DEBUSK: Correct.

MR. GALMORE: No, Your Honor.

THE COURT: Okay. So, I'm gonna basically tell them that and that we'll start tomorrow morning at 9:30 and just remind them about, you know, not talking about it or anything like that. All right?

MR. DEBUSK: Yes, sir.

THE COURT: Okay. Ask the jury to come in, please.

(REPORTER'S NOTE: Jury enters courtroom @ 3:34 p.m.)

THE COURT: All right, ladies and gentlemen, both the state and the defense have asked the Court to stop for today and reconvene tomorrow morning. I'm going to -- after listening to them, I'm going to do that, but they've assured me we will finish tomorrow. The case will be presented to you for your decision tomorrow, and so what I'm gonna do is excuse you, have you back tomorrow morning. We'll come in the courtroom at 9:30. I believe the bailiff's will have you here a little bit earlier, because the Clerk of Court's Office will have something for you in the jury room. So, with that,

1 remember you're not researchers, you're not investigators, you
2 can't look up anything, you can't talk to your best friend and
3 ask them what they think. If you happen to see one of the
4 jurors out and about, you can't talk to them about the case.
5 Only when all twelve of you are present after I have given the
6 case to you at the very end, may you talk about it.

7 I'll see you back tomorrow morning. Thank you very much.
8 Anything further from the state at this point in time?

9 MR. DEBUSK: Nothing, Your Honor. Thank you.

10 THE COURT: From the defense?

11 MR. GALMORE: No, sir.

12 THE COURT: All right, gentlemen, I'll see you tomorrow
13 morning then. Thank you very much.

14 MR. DEBUSK: Thank you, sir.

15 MR. GALMORE: Thank you.

16 **RECESS - 3:36 - END OF DAY ONE**

17 *****OFF THE RECORD*****

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina v. Devin Lamar Outen, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on February 5, 2020.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.

Kay H. Richardson
Official Court Reporter

December 7, 2021.

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2018-GS-26-06393 AND 06394

STATE OF SOUTH CAROLINA,)

Plaintiff,)

vs.)

DEVIN LAVAR OUTEN,)

Defendant.)

Transcript of Record

(Day 2 of 2)

February 6, 2020

B E F O R E:

Honorable Steven H. John
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

George H. DeBusk, Jr., Esquire
Attorney for State of South Carolina

James C. Galmore, III, Esquire
Attorney for Defendant

REPORTED BY:

Grace Hurley
Circuit Court Reporter

PREPARED BY:

Kay H. Richardson
Circuit Court Reporter

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1 **FEBRUARY 6, 2020 - DAY 2 OF 2**

2 **ON THE RECORD - 9:58 A.M.**

3 THE COURT: All right. So, with that, is the state ready
4 for the jury to come in?

5 MR. DEBUSK: Yes, Your Honor.

6 THE COURT: And defense?

7 MR. GALMORE: Yes, sir.

8 THE COURT: Ask the jury to come in, please, ma'am.

9 (REPORTER'S NOTE: Jury enters courtroom @ 9:58 a.m.)

10 THE COURT: All right. So, the very first thing that we
11 need to do -- and this is why we have alternates. The -- one
12 of the jurors fell ill over the -- overnight and sent us a
13 statement from the doctor, so -- that was Juror Number 95.
14 And so what I'm doing is I'm excusing that juror from her
15 duties and responsibilities in this particular matter.

16 And Ms. Leggens, as the alternate, I'm substituting you
17 in as a regular member of the jury in this particular case.
18 So, you'll be one of the regular members of the jury in this
19 matter. All right?

20 So, with that then is the state ready to proceed?

21 MR. DEBUSK: Yes, Your Honor.

22 THE COURT: All right. Call your next witness, please?

23 MR. DEBUSK: Thank you, Your Honor. The state calls Juli
24 Barnes.

25 THE COURT: All right. Please come around.

1 CLERK: Please raise your right hand and place your left
2 hand on the Bible.

3 JULI BARNES, HAVING BEEN DULY SWORN
4 TESTIFIES AS FOLLOWS:

5 CLERK: State and spell your name for the Court?

6 MS. BARNES: Juli Barnes, J-U-L-I, B-A-R-N-E-S.

7 THE COURT: Go ahead, Solicitor.

8 MR. DEBUSK: Thank you, Your Honor.

9 DIRECT EXAMINATION OF JULI BARNES BY MR. DEBUSK:

10 Q: Officer Barnes, who is your employer?

11 A: Horry County Police Department.

12 Q: And how long have you worked for Horry County?

13 A: Since 1998.

14 Q: What are your duties now?

15 A: I am a patrol officer.

16 Q: Were you the same in July of 2018?

17 A: Yes, sir.

18 Q: Did you respond to Green Leaf Drive on the morning of
19 July the 6th, 2018?

20 A: Yes, sir.

21 Q: What was the nature of the call?

22 A: A possible shooting.

23 Q: Okay. What -- what did you find when you arrived?

24 A: When I came around the corner, I found a lady in the
25 roadway with a gun in her hand.

1 Q: Did you secure that weapon?

2 A: Yes, I did. Yes, I did. I told her to put the gun on
3 the ground so I could secure the weapon, and I secured it in
4 my car.

5 Q: Okay. How about, do you remember the name of that
6 person; was it Phyllis Grice?

7 A: Yes, sir; it was Phyllis, Ms. Phyllis.

8 Q: What did you do with Ms. Phyllis?

9 A: I actually put her in my car also along with her dog.

10 Q: What was her emotional state when you arrived?

11 A: She was very scared and hysterical at that point. I put
12 her in my car, because I was not sure where -- what was going
13 on that time. It was for safety reasons.

14 Q: Was she cooperative?

15 A: Yes; yes, sir.

16 Q: Did you take a statement from her?

17 A: Not at that time.

18 Q: Did other officers arrive at the scene?

19 A: Yes; yes, they did.

20 Q: Was the scene cleared for suspects?

21 A: Yes, sir.

22 Q: And when they do that, they look in the trailer where she
23 lived as well?

24 A: Yes, sir.

25 Q: And looked in the area immediately surrounding it?

1 A: Yes, sir.

2 Q: Did they find anyone there?

3 A: No, sir.

4 Q: Did you see the vehicle there in the ditch?

5 A: As I was pulling up, dispatch had told us that there may
6 be a vehicle in the area, and as I was pulling down the road,
7 I did observe a vehicle in the ditch on the side that I was
8 going towards her, but I did observe a vehicle in the ditch to
9 the right.

10 Q: So, when the officers cleared the scene, they would've
11 cleared that vehicle as well, correct?

12 A: Yes, sir.

13 Q: Did any detectives arrive to take over the investigation
14 after that?

15 A: Yes, sir.

16 Q: Did you secure the scene for them until they arrived?

17 A: Yes, sir.

18 Q: Let me ask you a little bit about where this location is.
19 Where is Green Leaf Drive?

20 A: It is in Sector 14 off of Highway 14 or Highway --
21 Highway 544.

22 MR. DEBUSK: Court's indulgence while I read this.

23 THE COURT: Yes, sir.

24 BY MR. DEBUSK:

25 Q: I'm showing you what's been marked as State's 14, 15, and

1 16 and ask if you recognize these?

2 A: Okay. Yes, sir.

3 Q: What are they?

4 A: These are the aerial maps of the location of where Ms.
5 Phyllis lives.

6 Q: Do they show a clear and accurate representation of the
7 location of her house?

8 A: Yes, sir.

9 Q: What's the difference between the three?

10 A: One shows where Highway 544 is and then shows where Green
11 Leaf is, where her house is; one shows a higher area, a
12 broader area from Highway 544; one shows Green Leaf where her
13 house is; and the other one is a bigger area where it shows
14 all of Carolina Forest and a broader area.

15 Q: All right. Gotcha.

16 MR. DEBUSK: At this time, the state would move 14, 15,
17 and 16 into evidence?

18 THE COURT: Any objection?

19 MR. GALMORE: No, sir, no problem with this, Your Honor.

20 STATE'S EXHIBITS NUMBER 14, 15, AND 16

21 ADMITTED INTO EVIDENCE

22 BY MR. DEBUSK:

23 Q: Officer Barnes, I hate to ask you the obvious, but what
24 county is this house in?

25 A: Horry County.

1 Q: Thank you. And you're with the Horry County Police?

2 A: Yes, I am with the Horry County Police Department.

3 MR. DEBUSK: Your Honor, may I publish these?

4 THE COURT: Yes, sir, you may do so.

5 BY MR. DEBUSK:

6 Q: Thank you, Officer Barnes. Please answer any questions
7 the defense may have

8 THE COURT: Cross-examination?

9 CROSS-EXAMINATION OF JULI BARNES BY MR. GALMORE:

10 Q: Just to be clear, Officer Barnes, you were not in the
11 home with Ms. Grice of the attempted burglary?

12 A: No, sir.

13 Q: But you responded in response to a 911 call for service?

14 A: Yes, sir.

15 Q: And when you responded, I believe you said your first
16 priority was to secure the weapon?

17 A: My first priority was to secure the weapon and to also
18 the safety of Ms. Phyllis.

19 Q: Yes. Okay. So -- so, along those lines, you asked Ms.
20 Grice to put the weapon down and you ultimately took
21 possession of it and put it in your car and put her in the
22 car, as well?

23 A: Right. Yes, sir.

24 Q: Did you search Ms. Grice's home looking for suspects and
25 try to clear the house?

1 A: Not right away.

2 Q: Okay. But you did participate in that search?

3 A: No -- not that I recall.

4 Q: Okay. What about the outside, did you search around the
5 house in the yard, back yard, that type of thing?

6 A: Yes, sir.

7 Q: Okay. Did you take a written statement from Ms. Grice?

8 A: Yes, sir.

9 Q: Okay. And when you looked around the outside of the
10 house, did you observe whether or not there was video
11 surveillance at the home?

12 A: Video?

13 Q: Yes, ma'am.

14 A: I did not observe any video surveillance.

15 Q: What about lighting, were you able to make any notations
16 or any recollections about the lighting at her house?

17 A: I didn't write any notations, but there was -- there was
18 lighting. I don't recall if there was any lighting working on
19 the back porch; I had my flashlight.

20 Q: Okay. On that back porch, do you recall if the back door
21 was open when you got there or not?

22 A: It had pry marks on it.

23 Q: Right. Was it like open like wide open, partially open
24 or not broken?

25 A: I don't recall if that was where I entered the home or

1 not.

2 Q: You can't really give us any information about the
3 condition of the back door?

4 A: I can give you condition of the back door; yes, I can.

5 Q: It had pry marks on it?

6 A: It had been opened.

7 Q: That's what I had asked, when you got there was the door
8 opened or not?

9 A: You asked me if it was open.

10 Q: Okay. Was the back door open or not ---

11 A: I can't recall if it was open then, but it had been
12 opened.

13 Q: What makes you say the door had been opened?

14 A: She had put things in front of the door. She, from what
15 she relayed to me, was she was scared from other things that
16 have happened in that past, I'm not sure what that was. She
17 had put tables in front of the door, she had put chairs in
18 front of the door, she had put things at that door so nobody
19 would be able to come to that door. Those things had been
20 moved and the door had been pried open. I could see the pry
21 marks on the door.

22 Q: All right. Did you see any shoe impressions on Ms.
23 Grice's back door?

24 A: I could see, yeah; yes, sir.

25 Q: Did you take a picture of those impressions?

1 A: I did not at that time.

2 Q: Did you take any measurements of those shoe impressions?

3 A: I did not at that time.

4 Q: Did you take a cast of the shoe impressions?

5 A: I did not at that time.

6 Q: Well, did you do it at any other time?

7 A: Me, I did not.

8 Q: Okay. Thank you, officer, I have no further questions.

9 THE COURT: Any redirect?

10 MR. DEBUSK: Just one, Your Honor.

11 REDIRECT EXAMINATION OF JULI BARNES BY MR. DEBUSK:

12 Q: Just to be clear, when you arrived, was it still dark?

13 A: Yes, sir.

14 Q: So, it was nighttime?

15 A: Yes, sir.

16 Q: Thank you.

17 MR. DEBUSK: No further questions, Your Honor.

18 THE COURT: Anything else?

19 MR. GALMORE: No, sir.

20 THE COURT: All right. Do you wish the witness to be
21 excused?

22 MR. DEBUSK: Yes, Your Honor; we do.

23 THE COURT: Any objection?

24 MR. GALMORE: No, sir.

25 THE COURT: All right, ma'am, you're released from your

1 subpoena, you may go back to your regular duties. Thank you.

2 MS. BARNES: Thank you.

3 THE COURT: Your next witness.

4 MR. DEBUSK: Your Honor, the state calls Fred Rash.

5 CLERK: Please raise your right hand and place your left
6 hand on the Bible

7 FRED RASH, HAVING BEEN DULY SWORN

8 TESTIFIES AS FOLLOWS:

9 CLERK: Please state and spell your name.

10 MR. RASH: My first name is Fred, last name is Rash;
11 spelled F-R-E-D, R-A-S-H.

12 DIRECT EXAMINATION OF FRED RASH BY MR. DEBUSK:

13 Q: Detective Rash, who is your employer?

14 A: Horry County Police Department.

15 Q: How long have you been with Horry County Police?

16 A: Fourteen years this month.

17 Q: What are your duties currently?

18 A: Currently, I am a detective with the special victim's
19 unit.

20 Q: How about in July of 2018, what were your duties then?

21 A: I was corporal for Central Precinct and supervisor for
22 that shift.

23 Q: Did you assist with the investigation of an attempted
24 burglary on Green Leaf Drive?

25 A: I did.

1 Q: What was your role?

2 A: My role was to get to Officer Barnes as quickly as
3 possible. The Sergeant had actually arrived before me, and
4 then at that point the vehicle that she referred to in the
5 ditch, the tags were run. They asked me to try and locate the
6 owner of that vehicle, and I don't have the exact address, but
7 I think it's 3555 Highway 544 Overpass, it's Carolina East --
8 Coastal Villas is what it used to be called.

9 Q: Would seeing your report refresh your memory?

10 A: Yeah.

11 Q: I don't know if you need it.

12 A: Yeah, I don't think -- yeah, I didn't put the exact
13 address in there. But, I was asked to go find the owner of
14 the vehicle. And then as I pulled into the parking lot of
15 that apartment complex, I started driving around looking for
16 the building number. I saw a female, appeared to be a little
17 frantic, pacing and on the phone. I asked if she was Ms.
18 Ruhle; it was.

19 Q: Well, what was the name of owner?

20 A: Ruhle.

21 Q: What was her first name?

22 A: I don't remember her first name, but ---

23 Q: Ms. Ruhle, you found Ms. Ruhle?

24 A: Yeah, she was out there and she -- when I asked her if
25 she was Ms. Ruhle, I explained to her that there was a

1 possibility that the person operating her vehicle had been
2 shot. Our understanding was at that time that there was one
3 person shot and had fled the scene. She was actually on the
4 phone with Mr. Outen at the time. I told her I would take her
5 down there, we needed to get him medical attention. That was
6 first and foremost. So, she continued to speak with him on
7 the phone while being escorted back to the, not the scene, but
8 a carwash called Sudz Carwash nearby. At that point, he was
9 giving ---

10 Q: Sudz on 544?

11 A: Yes, Kingswood Drive and 544. Well, as she's in the back
12 talking, Detective Guskiewicz actually came up and spoke with
13 me and he started speaking with Mr. Outen. We were trying to
14 get a better location.

15 Q: Speak with him on the phone?

16 A: Yes, on the phone. Trying to get him to tell us where he
17 was, because we didn't know the nature of his injuries. We
18 knew he had been hit, but we did not know how badly. And
19 eventually we went down the road towards -- I don't recall the
20 street name, it's probably a quarter mile west of Sudz Carwash
21 and there's a Dollar General that's fairly new. We kind of
22 set up in that area and she was still with us. Detective
23 Guskiewicz was still trying to speak with him on the phone.
24 He started describing things around him. At that point, we
25 started walking the sidewalks, and I believe it was Detective

1 Guskiewicz actually located him coming out from behind some
2 bushes at a Plants Direct. I don't recall the exact address,
3 but I believe the solicitor has it, of a place called Plants
4 Direct. It used to be the Rocking Horse Saloon. When he came
5 out he was bleeding, he was very belligerent and upset saying
6 just take me to jail; I don't need to go to the hospital.

7 Q: And he did have a bullet wound?

8 A: Yes, he had -- he had what appeared to be a gunshot wound
9 through and through in his abdomen.

10 Q: Thank you. Please answer any questions the defense might
11 have.

12 THE COURT: Cross-examination?

13 CROSS-EXAMINATION OF FRED RASH BY MR. GALMORE:

14 Q: Detective Rash, you were not present in Ms. Grice's home
15 when the burglary or attempted burglary occurred?

16 A: No, sir.

17 Q: Okay. So, you responded in response to a 911 telephone
18 call, also?

19 A: Yes.

20 Q: You indicated your responsibilities here were to track
21 down the vehicle and vehicle owner?

22 A: Well, no; no, no, no.

23 Q: I'm sorry?

24 A: Not the vehicle, the vehicle had already been located.

25 Q: Right.

1 A: But the vehicle owner, try and locate the vehicle owner
2 at the registered address, yes.

3 Q: Well, let's start with the vehicle first. Did you
4 inventory the vehicle?

5 A: No, sir.

6 Q: You did not. Okay. You didn't search the car?

7 A: No.

8 Q: Did you search Ms. Grice's home like a check of the home?

9 A: No, sir.

10 Q: No. Okay. That was other officers?

11 A: Yes, sir.

12 Q: Did you check the outside of her home ---

13 A: No, sir. Maybe I can kind of clarify this.

14 Q: Okay.

15 A: When I responded, we had actually shut down all of
16 Kingswood Drive all the way from the highway there because of
17 the situation and the unknowns. So, we had shut everything
18 down. There was no traffic coming in or out and that's where
19 I met with other officers to discern and decide where we were
20 sending people at that time.

21 Q: And your duties were to track down the owner of the
22 vehicle?

23 A: Yes, and -- and take control of the people under my
24 supervision; yes, sir.

25 Q: And you were able to locate Ms. Ruhle?

1 A: Yes.

2 Q: And she was on the phone with Mr. Outen?

3 A: Yes, sir; that's what she stated.

4 Q: Right. Did you talk to Mr. Outen?

5 A: No, sir.

6 Q: Okay. But you believe that Detective Guskiewicz talked
7 to Mr. Outen on the phone?

8 A: Yes, sir.

9 Q: And as a result of their conversation, Detective
10 Guskiewicz was able to apprehend Mr. Outen?

11 A: Yes, he walked out.

12 Q: He walked out?

13 A: Yeah.

14 Q: And so Outen talked to the police and then came out?

15 A: Not immediately by any means. It was a long process.

16 Q: He didn't tell you -- well, tell Detective Guskiewicz
17 where he was?

18 A: Right. I -- and I was with them about 90 percent of that
19 time, aside from he where -- he moves faster than me; I'm old.

20 Q: Yes, sir. Thank you. No further questions.

21 A: All right.

22 THE COURT: Redirect?

23 MR. DEBUSK: No, Your Honor, we'd ask that he be excused?

24 THE COURT: Any objection?

25 MR. GALMORE: No, sir.

1 THE COURT: All right, sir, you're released from your
2 subpoena and may go back to your regular duties.

3 Thank you, sir.

4 MR. RASH: Thank you, Your Honor.

5 THE COURT: All right. Your next witness, please, sir?

6 MR. DEBUSK: Your Honor, the state calls Casey
7 Guskiewicz.

8 THE COURT: All right, sir. Please come around and be
9 sworn.

10 CLERK: Please raise your right hand and place your left
11 hand on the Bible.

12 CASEY GUSKIEWICZ, HAVING BEEN DULY SWORN
13 TESTIFIES AS FOLLOWS:

14 CLERK: State and spell your name for the Court.

15 MR. GUSKIEWICZ: Casey, C-A-S-E-Y; last name Guskiewicz,
16 G-U-S-K-I-E-W-I-C-Z.

17 DIRECT EXAMINATION OF CASEY GUSKIEWICZ BY MR. DEBUSK:

18 Q: Good morning, Detective Guskiewicz. Who is your
19 employer?

20 A: The Horry County Police Department.

21 Q: And how long have you been with Horry County?

22 A: It will be ten years in April.

23 Q: What are your duties at this time?

24 A: Currently, I am a detective assigned to the special
25 victim's unit.

1 Q: You work with Detective Rash?

2 A: Yes.

3 Q: Okay. What about in July of 2018, what were your duties
4 then?

5 A: I was assigned as a patrol officer in the Central
6 Precinct working in Sector 16.

7 Q: Does that include the area around Green Leaf Drive?

8 A: It's the next sector over, but we share -- we -- it's
9 almost partnering sectors. So, yes, we ---

10 Q: You support them when need you?

11 A: Yes, absolutely.

12 Q: Okay. Were you on duty the early morning hours of July
13 6th, 2018?

14 A: Yes, I was.

15 Q: Did you respond to the Green Leaf Drive for an
16 investigation that day?

17 A: Yes, I did.

18 Q: What route did you take to get to Green Leaf Drive?

19 A: I believe I was coming from the area of Conway City, so I
20 came from the west side of 544 towards Green Leaf Drive and
21 made a left onto Green Leaf Drive.

22 Q: Did you see anything when you turned onto Green Leaf
23 Drive?

24 A: When I turned onto Green Life Drive, there was a black
25 male at the corner of Green Leaf Drive, and he appeared to be

1 on his -- it was -- excuse me, at the corner of Green Leaf
2 Drive and Highway 544, across from the car wash and he
3 appeared to be on a cell phone.

4 Q: Why did this catch your eye?

5 A: He was the only person out at that time of night.

6 Q: About 3:45 in the morning?

7 A: Yes, sir.

8 Q: Okay. Did you do anything in response to seeing that
9 individual?

10 A: I believe my sergeant was behind me, and I relayed
11 information to him on the radio that -- what I'd seen, and he
12 told me that he was going to stop and get out with that
13 subject. As I was going to the address, I believe he relayed
14 more information that the subject, once he approached him, had
15 ran off into the nearby wood line. So, I immediately went to
16 him to try and locate the subject.

17 Q: Were you able to locate that subject?

18 A: Not at that time, no. We spent a significant time in the
19 woods trying to find him.

20 Q: What area did you search?

21 A: There's a small wooded area, I believe it's between
22 Kingswood Drive and I think the next road over is Meadowbrook
23 Drive.

24 Q: Okay.

25 MR. DEBUSK: Court's indulgence while I get it marked?

1 THE COURT: Yes, sir.

2 BY MR. DEBUSK:

3 Q: Let me show you what's been marked as State's Exhibit 17
4 and ask if you recognize that?

5 A: Yes. This appears to be an aerial map, which includes
6 the incident location and Highway 544.

7 Q: Does it include the two roads you just mentioned,
8 Kingswood and was it Meadowbrook?

9 A: Meadowbrook; yes, sir.

10 Q: Let's hold that for just a minute.

11 A: Sure.

12 Q: We'll authenticate it more in a moment. While you were
13 there working that, did you encounter Detective Rash or
14 Patrolman Rash?

15 A: I'm sorry?

16 Q: At that time, Corporal Rash?

17 A: Right.

18 Q: Did you encounter Fred Rash?

19 A: Yes, he -- I believe he had found the owner of the
20 registered -- the vehicle -- the vehicle -- excuse me. He had
21 found the owner of the registered vehicle that was found near
22 the scene, yes.

23 Q: Okay. What happened when you found Detective Rash and
24 the owner?

25 A: She was -- I believe she was on her cell phone, and it

1 appeared she was talking to somebody on the cell phone. So, I
2 took the cell phone from her and tried to find out who she was
3 talking to. And the subject on the other end of the line was
4 talking at a very fast pace, and I think at that point, he was
5 thinking he was still on the phone with Ms. Ruhl.

6 Q: Uh-huh, (affirmative response).

7 A: Until eventually I kind of got, you know, his attention
8 and let him know who I was to find out to find out exactly who
9 he was and what his involvement might've been in the
10 situation.

11 Q: What did you learn from that conversation?

12 A: He had said that he had been shot. So, at that point,
13 obviously we wanted to try and locate him to find out exactly
14 what his involvement was, but also to assess his injuries
15 because he did indicate that he had been shot in the stomach.
16 So, a shot in the stomach is, you know, could be a fatal
17 situation. So, we're also concerned with his overall
18 wellbeing.

19 Q: What did you do after that?

20 A: Continued speaking to him on the phone and trying to get
21 him to come out of the woods. Eventually, he said he was
22 gonna come out to us, and we were trying to find out where his
23 location was.

24 Q: Did you have to work at persuading him a little bit?

25 A: Yeah, a little bit. He was -- he was very hesitant in

1 coming out. He kept telling us that he kept seeing Fox's
2 Pizza, which Fox's Pizza is closer to Myrtle Ridge, which was
3 probably about at least a quarter mile from where we were from.
4 So, I got into my patrol vehicle and started heading in that
5 direction and he kept telling me that he would see us. He
6 said I see you guys, I see you guys; you can't see me. And,
7 you know, I kept asking him, are you out on the sidewalk; you
8 need to come out to us until eventually, I believe an officer
9 with the City of Conway who was assisting us saw him walk out
10 behind the Plants Direct, which was probably right there
11 probably about a quarter mile from where the Dollar General
12 was -- excuse me -- probably less than quarter mile from the
13 Dollar General.

14 Q: The, I'm sorry, State's Exhibit 17 that you have before
15 you ---

16 A: Yes.

17 Q: --- is the location of that Plants Direct shown on that?

18 A: Yes.

19 Q: Is it on 544?

20 A: Yes, it's on 544.

21 Q: What's the address?

22 A: 2019 Highway 544.

23 Q: Is the location of the original call also shown on there
24 on Green Leaf Drive?

25 A: It is. It's 2295 Green Leaf Drive.

1 MR. DEBUSK: At this time, the state would offer State's
2 17 into evidence.

3 THE COURT: All right. Any objection?

4 MR. GALMORE: No, sir; no objection.

5 THE COURT: All right. So, it's into evidence without
6 objection.

7 STATE'S EXHIBIT NUMBER 17

8 ADMITTED INTO EVIDENCE

9 THE COURT: You may proceed.

10 MR. DEBUSK: May I publish, Your Honor?

11 THE COURT: Yes, sir.

12 BY MR. DEBUSK:

13 Q: About how long after the initial call did you locate the
14 suspect?

15 A: Honestly, I couldn't tell you. It was quite a while
16 because he -- again, it took us a little while to locate the
17 registered owner and then the phone call. Honestly, I don't
18 remember how long it was.

19 Q: Do you think it was more or less than an hour?

20 A: It was probably right around an hour, maybe.

21 Q: When you saw the suspect, was he injured?

22 A: Yes. He had a gunshot wound to his stomach area.

23 Q: Did you know this individual?

24 A: Yes, I recognized him. I had spoken to him before
25 previously on a few occasions.

1 Q: Was this a non-law enforcement thing?

2 A: Yeah. It was non-law enforcement related. There was --
3 I can specifically remember one time, I was at the Scotchman
4 or, yeah, the Scotchman gas station on Highway 544 overpass,
5 and he had pulled up and just made small talk with me for a
6 significant amount of time.

7 Q: Do you remember the vehicle that you saw at the scene?

8 A: It was a gray SUV that he was driving.

9 Q: When you chatted with him at the gas station, was he
10 driving a similar vehicle?

11 A: Yes.

12 Q: Please answer any questions the defense has.

13 A: Sure.

14 THE COURT: Cross-examination?

15 CROSS-EXAMINATION OF CASEY GUSKIEWICZ BY MR. GALMORE:

16 Q: Detective Guskiewicz, you were not in charge of searching
17 Ms. Grice's home?

18 A: No, sir.

19 Q: Okay. So, did you go into the home and try to clear it?

20 A: I don't recall; no, sir.

21 Q: Okay. What about the surrounding yard, front yard, back
22 yard, around the home, were you -- did you participate in
23 trying to clear it of suspects?

24 A: No, I don't recall doing that; no, sir.

25 Q: Okay. Did you make any observations about the home? Did

1 you observe whether or not she had video surveillance?

2 A: No, sir; I don't.

3 Q: Okay. Did you notice whether or not she had lighting at
4 the front door or back door?

5 A: No, sir. I honestly don't even remember going to the
6 house.

7 Q: Okay. What about the truck? Did you participate in
8 inventorying the vehicle?

9 A: No, sir.

10 Q: No. All right. Your duties here ended up trying to
11 locate the suspect and get him to turn himself in; is that
12 correct?

13 A: Yes, sir.

14 Q: Okay. And to that end, you spoke with Mr. Outen on the
15 telephone?

16 A: Yes; I did.

17 Q: Did he refuse to speak to you once you identified
18 yourself as a police officer?

19 A: No. He was -- he was -- once I relayed to him who I was,
20 he was more than willing to talk to me.

21 Q: Did he indicate that he remembered you or recognized you
22 or at least knew who you were?

23 A: I believe he did; yes, sir.

24 Q: Okay. And you recognized him I think you mentioned from
25 a previous ---

1 A: Yeah, I didn't recognize his voice over the phone.

2 Q: Right.

3 A: But again, once I saw him when he came out the woods,
4 yes, I remember speaking to him.

5 Q: Was this the same person that you saw when you were
6 responding on 544?

7 A: Honestly, whenever I drove past him, all I remember
8 seeing was a black male. So, I'm gonna assume it was.

9 Q: You can't really say?

10 A: No; no, sir.

11 Q: All right. Thank you. And when Mr. Outen came out of
12 the wood line and turned himself in, you said he was injured.
13 Was it necessary for him to have medical treatment?

14 A: Oh, yes; absolutely. Again, with a gunshot wound to the
15 stomach, it was imperative that we get him to the hospital
16 right away to have him assessed and treated.

17 Q: You all did just that, called the ambulance and sent him
18 to the hospital?

19 A: Yes. I sat with him as he got transported to Grand
20 Strand Medical Center.

21 Q: Thank you, sir. No further questions.

22 THE COURT: Any redirect?

23 MR. DEBUSK: No, Your Honor. We'd ask that Detective
24 Guskiewicz be excused.

25 THE COURT: Any objections?

1 MR. GALMORE: No, sir; no objection.

2 THE COURT: All right, sir, you're released from your
3 subpoena and may go back to your regular duties. Thank you,
4 sir.

5 All right. Next witness, please?

6 MR. DEBUSK: The state calls Dennis Lewis.

7 THE COURT: All right. Please come around, sir.

8 CLERK: Please raise your right hand and place your left
9 hand on the Bible.

10 DENNIS LEWIS, HAVING BEEN DULY SWORN,
11 TESTIFIED AS FOLLOWS:

12 THE COURT: If you will step around, state and spell your
13 name for the Court.

14 MR. LEWIS: Dennis Lewis; D-E-N-N-I-S, L-E-W-I-S.

15 DIRECT EXAMINATION OF DENNIS LEWIS BY MR. DEBUSK:

16 Q: Officer Lewis, who is your employer?

17 A: Horry County Police Department.

18 Q: How long have you been with the Horry County Police?

19 A: Roughly, 15 years.

20 Q: What are your duties at this time?

21 A: Investigator for the crime scene unit.

22 Q: In July of 2018, were you the same?

23 A: I was.

24 Q: Okay. Did you participate in the investigation of an
25 attempted burglary on Green Leaf Road in South Conway?

1 A: I did.

2 Q: Did you respond to the scene?

3 A: I did not.

4 Q: Okay. What did you do?

5 A: Searched a 2002 Isuzu Rodeo.

6 Q: Do you recall who that was registered to?

7 A: I don't.

8 Q: Was anyone with you while you were processing the

9 vehicle?

10 A: Yes, sir.

11 Q: Who was that?

12 A: Lead detective.

13 Q: John Brantly?

14 A: John Brantly.

15 Q: Okay. Did you have a search warrant when you searched

16 the car?

17 A: I did.

18 Q: Where did you search the car?

19 A: It was at the Horry County Police Department at the

20 impound lot.

21 Q: Is that here in Conway?

22 A: Yes, in Conway, South Carolina; yes, sir.

23 Q: Did you photograph the car?

24 A: I did.

25 MR. DEBUSK: Court's indulgence while I get the ---

1 THE COURT: Yes, sir.

2 BY MR. DEBUSK:

3 Q: Thanks to my disorganization these might be a little bit
4 out of order, but let me ask you about State's 22 first and
5 ask if you recognize that.

6 A: I do.

7 Q: What is that?

8 A: That's the 2002 Rodeo that I searched.

9 Q: Is it located at the impound yard when the photograph was
10 taken?

11 A: Yes, sir; it is.

12 Q: Those photos you took?

13 A: I did.

14 MR. DEBUSK: Your Honor, we would move State's 22 into
15 evidence at this time.

16 THE COURT: Any objection?

17 MR. GALMORE: No, sir; no objection.

18 THE COURT: All right. Into evidence without objection.

19 STATE'S EXHIBIT NUMBER 22

20 ADMITTED INTO EVIDENCE

21 BY MR. DEBUSK:

22 Q: Did you photograph the interior of the car?

23 A: I did.

24 Q: Let me show you what has been marked as State's 18.

25 A: Yes, sir.

1 Q: What is that?

2 A: That's the interior front seat area, driver seat area,
3 and passenger seat are.

4 Q: Was that as soon as you opened the door before you
5 disturbed anything in that vehicle?

6 A: Yes, sir.

7 Q: The picture you took?

8 A: That is the pictures I took; yes, sir.

9 MR. DEBUSK: State would move State's 18 into evidence.

10 THE COURT: Any objection?

11 MR. GALMORE: No, sir.

12 THE COURT: All right. It's into evidence without
13 objection.

14 STATE'S EXHIBIT NUMBER 18

15 ADMITTED INTO EVIDENCE

16 BY MR. DEBUSK:

17 Q: On the -- in the front passenger area of the front seat,
18 did you find any evidence -- items of evidentiary value?

19 A: I did; yes, sir.

20 Q: What did you find?

21 A: I found a black tire tool on the front passenger seat.

22 Q: I'll show you what's been marked as State's 20 and ask if
23 you recognize that.

24 A: Yes, sir; I do.

25 Q: What is that?

1 A: That's the tire iron that was located on the front
2 passenger seat.

3 Q: The picture you took?

4 A: I did take that picture; yes, sir.

5 MR. DEBUSK: Your Honor, the state would move State's 20
6 into evidence.

7 THE COURT: Any objection?

8 MR. GALMORE: No, sir; no objection.

9 THE COURT: In evidence without objection.

10 STATE'S EXHIBIT NUMBER 20

11 ADMITTED INTO EVIDENCE

12 BY MR. DEBUSK:

13 Q: I'm showing you what's already been marked for
14 identification as State's 12 and ask if you recognize that.

15 A: Yes, sir.

16 Q: What is it?

17 A: That's the tire tool, tire iron that I located on the
18 front passenger seat.

19 Q: Does it appear to have any scratches or paint transfer on
20 it?

21 A: It does; yes, sir.

22 Q: Thank you.

23 MR. DEBUSK: At this time, the state would move State's
24 12 into evidence, Your Honor.

25 THE COURT: Any objection?

1 MR. GALMORE: No, sir; no objection.

2 THE COURT: In evidence without objection.

3 STATE'S EXHIBIT NUMBER 12

4 ADMITTED INTO EVIDENCE

5 BY MR. DEBUSK:

6 Q: Now, that was on the front passenger seat, correct?

7 A: That is correct.

8 Q: Directly next to the driver seat?

9 A: Yes, sir.

10 Q: Did you find other tools in the vehicle?

11 A: I did.

12 Q: Where were they?

13 A: In the hatchback trunk area.

14 Q: Let me show you State's 21 and 19 and ask if you
15 recognize these.

16 A: Yes, sir; I do.

17 Q: What are they?

18 A: They're photographs of the trunk area, hatchback area of
19 the 2002 Rodeo.

20 Q: Pictures you took?

21 A: Picture I took of tools; yes, sir.

22 MR. DEBUSK: Your Honor, we'd move State's 19 and 21 into
23 evidence.

24 THE COURT: Any objection?

25 MR. GALMORE: No, sir; no objection.

1 THE COURT: All right. They're in evidence without
2 objection.

3 STATE'S EXHIBIT NUMBER 19 and 21
4 ADMITTED INTO EVIDENCE

5 THE COURT: You may proceed.

6 BY MR. DEBUSK:

7 Q: On State's 19, there's -- appears to be a large box in
8 the back of the vehicle; do you know what that is?

9 A: Yes, sir. It appears to be a speaker.

10 Q: Where were the tools located relative to that speaker?

11 A: Kind of to the left of it and to the right of it, just
12 all around it.

13 Q: But all in the back area?

14 A: All in the back area; yes, sir, in the hatchback area.

15 Q: So, the only tool that was not in the back hatchback area
16 -- and I -- oh, I'm sorry -- on 19, you also had to take out
17 some clothes and appears to be plastic bottles to get the
18 tools; is that correct?

19 A: Yes, sir. Yes, sir. We removed the speaker, the box,
20 the speaker and clothes and tools, yes.

21 Q: But the only tool that was out and available and not
22 behind that speaker or under the clothes was this tire iron?

23 A: That is correct; yes, sir.

24 MR. DEBUSK: Your Honor, may I publish State's 17 through
25 21?

1 THE COURT: Yes, sir.

2 MR. DEBUSK: I'm sorry, 18.

3 THE COURT: To 21?

4 MR. DEBUSK: Yes, sir.

5 THE COURT: Yes, sir; you may.

6 MR. DEBUSK: Thank you, Your Honor. Are they all into
7 evidence?

8 THE COURT: Yes, sir. All of them, 18 through 21 are in
9 evidence, along with 22.

10 BY MR. DEBUSK:

11 Q: Please answer any questions defense may have.

12 A: Thank you. Yes, sir.

13 THE COURT: Cross-examination.

14 CROSS-EXAMINATION OF DENNIS LEWIS BY MR. GALMORE:

15 Q: So, sir, your role in this case was to inventory the
16 Isuzu Rodeo, correct?

17 A: Yes, sir.

18 Q: So, you were not on scene at all that night?

19 A: I was not.

20 Q: And when you searched the Rodeo, that was pursuant to a
21 search warrant, right?

22 A: It -- that's correct; yes, sir.

23 Q: So, someone obtained the search warrant authorizing you
24 to go through the car?

25 A: Correct; yes, sir.

1 Q: And when you went through the car, one of the things that
2 you found was this crowbar?
3 A: Yes, sir; that tire tool, yeah; that's correct.
4 Q: All right. Did you lift any fingerprints off of that
5 tire tool?
6 A: I did not.
7 Q: Could you have attempted to lift fingerprints off of the
8 tire tool?
9 A: We could have; yes, sir.
10 Q: But that was not done in this case?
11 A: No, sir.
12 Q: All right. What about the DNA; did you lift or obtain
13 any DNA from this tire tool?
14 A: No, sir; we did not.
15 Q: Could you have attempted to obtain DNA off of this tire
16 tool?
17 A: We could have; yes.
18 Q: But it wasn't done in this case?
19 A: No, sir.
20 Q: And it is also a comment about paint transfer. Did you
21 collect any of the paint that was transferred onto the tire
22 tool?
23 A: No, sir.
24 Q: Did you compare that paint that wasn't collected to the
25 paint on Ms. Grice's door?

1 A: We did not.

2 Q: Does Horry County Police Department have the ability to
3 compare those two paint samples.

4 A: We do; yes, sir.

5 Q: But it wasn't done in this case?

6 A: Was not.

7 Q: How would you compare those paint samples?

8 A: By photographing, number one, documentation, and then
9 we'd take it -- if it's a tool mark, we do a casting.

10 Q: Could you also send off like the actual samples to SLED?

11 A: We do; yes, sir.

12 Q: And have them test them chemically to see if it's the
13 same paint?

14 A: That's correct; yes, sir.

15 Q: So, if you were to photograph and do a video -- visual
16 comparison, that's something that you will do at the police
17 department?

18 A: Correct; yes, sir.

19 Q: And if you had to send it off for chemical testing,
20 that's something that would be done at SLED?

21 A: That's correct.

22 Q: But neither of those were done in this case?

23 A: No, sir.

24 Q: Okay. Were you involved in identifying any shoe
25 impressions that were found at the scene in this case?

1 A: I was not.

2 Q: Were you asked to try to lift any fingerprints or DNA off
3 of a lightbulb involved in the case?

4 A: No, sir.

5 Q: All right. Thank you, sir. No further questions.

6 THE COURT: Redirect?

7 MR. DEBUSK: Briefly, Your Honor.

8 REDIRECT EXAMINATION OF DENNIS LEWIS BY MR. DEBUSK:

9 Q: If you found fingerprints or DNA of a regular user of the
10 vehicle on this tire iron, would it mean anything?

11 A: No, sir.

12 Q: Thank you.

13 MR. DEBUSK: Thank you. No further questions, Your
14 Honor.

15 THE COURT: Anything on that question?

16 MR. GALMORE: Yes, sir.

17 RECROSS EXAMINATION OF DENNIS LEWIS BY MR. GALMORE:

18 Q: If you ran that tire tool for DNA or fingerprints, you
19 could also find DNA that does not belong to the regular user
20 of that tire tool; is that correct?

21 A: Yes, sir.

22 Q: Thank you.

23 THE COURT: All right. Do you wish the witness to be
24 excused?

25 MR. DEBUSK: Not at this time, Your Honor, for technical

1 reason to do with chains of custody, we have to hold him for a
2 few minutes.

3 THE COURT: All right. Very good. Not a problem.
4 Just step down, sir.

5 MR. LEWIS: Thank you, Your Honor.

6 THE COURT: All right. Y'all come up and talk to me for
7 one second, please.

8 (REPORTER'S NOTE: Bench conference is held off the record in
9 the presence of but outside the hearing of the jury.)

10 THE COURT: All right. Your next witness, please, then.

11 MR. DEBUSK: Thank you, Your Honor. The state calls John
12 Brantly.

13 THE COURT: All right. Please come around to be sworn.

14 JOHN BRANTLY, HAVING BEEN DULY SWORN

15 TESTIFIES AS FOLLOWS:

16 CLERK: State and spell your name for the Court.

17 MR. BRANTLY: John Brantly; J-O-H-N, B-R-A-N-T-L-Y.

18 DIRECT EXAMINATION OF JOHN BRANTLY BY MR. DEBUSK:

19 Q: Detective Brantly, who is your employer?

20 A: Horry County Police Department

21 Q: And how long have you been with the Horry County Police?

22 A: A little over 13 years.

23 Q: What are your duties at this time?

24 A: I'm a narcotics and vice detective.

25 Q: How about in July of 2018, what were your duties back

1 then?

2 A: Homicide and major crimes.

3 Q: Did you work on an investigation of an attempted burglary

4 at Green Leaf Drive?

5 A: I did.

6 Q: What was your role?

7 A: I was the lead detective. I was called out.

8 Q: Were there any detectives that assisted you?

9 A: Detective King Hemingway assisted me.

10 Q: Where is Detective Hemingway right now?

11 A: He's been subpoenaed to Massachusetts for a homicide

12 trial up there.

13 Q: So, he's out of state?

14 A: Very much so.

15 Q: Okay. When did you first respond to the scene?

16 A: I believe it was probably about 5:00 a.m., approximately.

17 Q: Was it still dark when you went?

18 A: Oh, yes.

19 Q: What did you find when you arrived?

20 A: When I arrived, I met Officer Barnes, who was the initial

21 responding officer. She had secured Ms. Grice, as well as a

22 weapon that she had for officer safety as well as Ms. Grice's

23 safety. I believe -- I believe another officer was on scene

24 as well, and a vehicle was in the ditch, and she began to

25 bring me up to speed on what had occurred that evening or that

1 morning, I'm sorry.

2 Q: How far was the vehicle in the ditch away from Ms.

3 Grice's?

4 A: Forty yards. It was the next lot over; it was directly

5 adjacent.

6 Q: Was Ms. Grice cooperative when you spoke to her?

7 A: Very much so.

8 Q: You've referred to a vehicle in the ditch. I'm gonna

9 show you State's Exhibit 13 and ask if you recognize it?

10 A: Yes.

11 Q: What is it?

12 A: That's the Isuzu Rodeo that was inside the ditch that's

13 actually registered to Rashena (spelled phonetically) Ruhl.

14 Q: So, they checked the registration and it was registered

15 to Rashena Ruhl?

16 A: Yes.

17 Q: Did you develop an address for Rashena Ruhl?

18 A: 3555 Highway 544 Overpass, which is Coastal Villas, which

19 is right at the curve of Highway 544 and West Cox Ferry Road.

20 Q: Was there an apartment number?

21 A: I don't recall if there was an apartment number on the

22 registration or not.

23 Q: Would reviewing your records help you?

24 A: Yes.

25 Q: Please tell the jury what you're reviewing?

1 A: The certified DMV record for Rashena Ruhl, which does
2 show the 3555 Highway 544 Overpass. Apartment 28-H, as in
3 hotel, in Conway, South Carolina.

4 Q: Did you develop an address for the defendant Devin Outen?

5 A: Yes.

6 Q: What was that address?

7 A: The exact same address.

8 Q: Same apartment?

9 A: Same apartment.

10 Q: Was Mr. Outen taken into custody in this investigation?

11 A: Yes. He was taken into custody and transported to Grand
12 Strand Hospital.

13 Q: He was traced through the vehicle, correct?

14 A: I apologize?

15 Q: He was traced through the vehicle?

16 A: Yes.

17 Q: Was Ms. Ruhl questioned in the course of the
18 investigation?

19 A: She was as well, yes. She was -- after speaking and
20 interviewing Ms. Grice, and clearing up from the initial
21 scene, I met Ms. Ruhl and Sudz Carwash where she was with
22 other officers.

23 Q: When you investigated at the scene, did you see any
24 damage to the victim's house?

25 A: Yes. There was a damage to the rear door, where it

1 appeared had been pried.

2 Q: I'll show you State's 10 and 11 and ask if you recognize
3 those?

4 A: Yes. That's the rear door to Ms. Grice's home.

5 Q: Does it show the damage that you referred to?

6 A: It does. It shows the initial damage down to the -- the
7 doorknob area as well as to the dead bolt area, specifically
8 contained in those areas of the door.

9 Q: Was there any other evidence on the back deck and near
10 the back door that you found significant?

11 A: There was. I observed shoe imprints on the back deck.

12 Q: What were those shoe imprints made -- what was the
13 substance?

14 A: It's commonly referred to as dew. So, condensation from
15 the -- from the being early July in Horry County.

16 Q: So, that turns into basically water?

17 A: Yes, sir.

18 Q: Once the sun came up, that would've just evaporated,
19 correct?

20 A: Very quickly, yes.

21 Q: Did you do anything to try to preserve those footprints?

22 A: I asked Detective Hemingway when he arrived, once it was
23 seen, I was focused on the initial interview with Ms. Grice.
24 I asked him to go ahead and photograph those -- those imprints
25 before they were able to dissipate.

1 MR. DEBUSK: Court's indulgence?

2 THE COURT: Yes, sir.

3 BY MR. DEBUSK:

4 Q: I'm showing you what's been marked 23 and 24 and ask if
5 you recognize these?

6 A: Yes. Those are the photographs that Detective Hemingway
7 took from the back deck.

8 MR. DEBUSK: Your Honor, at this time the state would
9 move Exhibits 23 and 24 into evidence.

10 THE COURT: Any objection?

11 MR. GALMORE: No objection.

12 THE COURT: All right. They're in evidence without
13 objection, you may publish.

14 STATE'S EXHIBITS NUMBER 23 AND 24

15 ADMITTED INTO EVIDENCE

16 MR. DEBUSK: Thank you, Your Honor. I'll ask again, one
17 moment.

18 THE COURT: Yes, sir.

19 BY MR. DEBUSK:

20 Q: Again, these are just water, correct?

21 A: Yes.

22 Q: So, they would've disappeared quickly?

23 A: Very quickly, yes.

24 Q: But you did manage to get them before they dissipated?

25 A: Yes.

1 Q: Did you have time to get crime scene out there to
2 photograph them?

3 A: No. I think as great as our crime scene unit is, I don't
4 think by the time they would've gotten there that the evidence
5 would've been preserved long enough to be able to properly
6 document those.

7 Q: Did you ultimately find any shoes to compare to those
8 shoe impressions on the back porch?

9 A: Yes; we did.

10 Q: What shoes did you find?

11 A: They were actually part of Mr. Outen's property when he
12 was taken to Grand Strand Hospital, that which included his
13 clothes and his shoes as well, which we took possession of.

14 Q: You recovered the shoes from the hospital?

15 A: Yes, sir.

16 Q: Let me first show you State's Exhibit 25 and ask if you
17 recognize it.

18 A: Yes, sir.

19 Q: What is that?

20 A: That's the bottom of the defendant's shoe, which is a
21 Nike, I believe, gray in color, size 12.

22 MR. DEBUSK: Court's indulgence, one moment.

23 Your Honor, the state would move Exhibit 25 into
24 evidence.

25 THE COURT: Any objection?

1 MR. GALMORE: No, Your Honor.

2 THE COURT: All right. So, it's in evidence without
3 objection.

4 STATE'S EXHIBIT NUMBER 25

5 ADMITTED INTO EVIDENCE

6 BY MR. DEBUSK:

7 Q: Let me show you what is marked State's Exhibit 26 and ask
8 if you recognize the contents of this box?

9 A: Yes, sir. They would be the exact same shoes that were
10 taken from the defendant the night of the incident and that
11 were properly represented in the photographs that were just
12 shown.

13 Q: So, these are the shoes that he was wearing when
14 Detective -- now Detective Guskiewicz, arrested him?

15 A: Correct.

16 Your Honor, the state would move State's 26 into
17 evidence.

18 THE COURT: Any objection?

19 MR. GALMORE: No, sir.

20 THE COURT: All right. State's 26 is into evidence
21 without objection.

22 STATE'S EXHIBIT NUMBER 26

23 ADMITTED INTO EVIDENCE

24 THE COURT: You may proceed.

25 MR. DEBUSK: Your Honor, at this time, may I publish

1 State's 23, 24, and 25 to the jury?

2 THE COURT: Yes, sir.

3 BY MR. DEBUSK:

4 Q: Now, were you able to send them off to SLED to compare
5 the footprints to the shoes?

6 A: No, sir.

7 Q: Why is that? Were the photographs sufficient for SLED
8 comparison?

9 A: Oh, yeah; yes, sir. The -- the photographs taken of the
10 scene was sufficient for comparison.

11 Q: Do they have a scale on them for comparison purposes?

12 A: No; they did not.

13 Q: So, would that make -- would that make it ---

14 A: It would make it a little more difficult; yes, sir.

15 Q: Now, did there come a time when the vehicle that was
16 found at the scene in the ditch ---

17 A: Yes, sir.

18 Q: It was removed?

19 A: Yes; it was.

20 Q: Was it searched at the scene?

21 A: No; it was not.

22 Q: Where was it searched?

23 A: It was searched -- it was actually towed by Squeaky's,
24 which is our -- our vendor that we utilize strictly for crime
25 scene purposes. It was taken directly from the scene to the

1 impound lot which is secure at the M.L. Brown Building.

2 Q: Were you present when the vehicle was searched?

3 A: Yes, I was.

4 Q: Let me ask you if you recognize Exhibit 12?

5 A: Yes, sir; I do.

6 Q: Where was that found?

7 A: That was found in the front passenger seat.

8 Q: Okay. Did it appear to have paint transfer marks on it?

9 A: Yes, sir; it did.

10 Q: Do you also have photographs of the paint on Ms. Grice's

11 door, State's 10 and 11?

12 A: The pictures you showed just a second ago; yes, sir.

13 Q: Did you recover the weapon Ms. Grice had used?

14 A: Yes, I did. Yes, I did.

15 Q: Where was it?

16 A: That was -- when I arrived, it was on the front driver's

17 floorboard of Officer Barnes' patrol vehicle.

18 Q: Did you recover any projectiles from the defendant?

19 A: Projectiles, no, sir.

20 Q: Why not?

21 A: Because it was a gunshot wound, what was commonly

22 referred to as a through and through, so it entered the front

23 abdomen area and exited, just the fatty tissue, and exited the

24 back area and continued traveling.

25 Q: So, the defendant was arrested I think you testified it

1 was about an hour after the initial call at 3:45?

2 A: Yes, sir.

3 Q: Looks like getting on towards 5 o'clock. When was the
4 defendant released from the hospital? What are you referring
5 to so the jury can ---

6 A: I'm sorry.

7 Q: What are you referring to, so the jury will know?

8 A: It's the original case file that I -- that I documented
9 everything in. I would say approximately between 7:00 and
10 7:30 a.m. he was released.

11 Q: So, he wasn't there for more than two, two-and-a-half
12 hours?

13 A: At the most.

14 Q: So, this was not a life-threatening wound?

15 A: No, initially when he was taken there, they referred to
16 it as a level one trauma, which is any gunshot wound that is
17 received just because of the -- the unknown of what may
18 happen. After going through x-ray and whatnot, it was
19 discovered that it was a through and through, basically what
20 they refer to as a flesh wound. He was treated and quickly
21 released.

22 Q: Now, when you recovered the gun, did you -- Ms. Grice's
23 gun ---

24 A: Yes.

25 Q: Did you photograph it?

1 A: I did.

2 MR. DEBUSK: Court's indulgence one moment?

3 BY MR. DEBUSK:

4 Q: I'll show you State's Exhibit 27 and ask if you recognize
5 that?

6 A: I do.

7 Q: What is it?

8 A: These are the photographs that I took of Ms. Grice's .38
9 revolver.

10 Q: Okay. Does it show the shells as they were when you
11 first recovered the gun?

12 A: It does. When I first -- after photographing it, I did
13 mark the -- I did mark the barrel placement of where it
14 specifically was intact prior to releasing the ---

15 Q: Cylinder?

16 A: There you go -- the cylinder. And therefore, you could
17 actually determine which round had been recently fired.

18 Q: Now, how many rounds were there?

19 A: It appears from the cylinder that three rounds were
20 fired.

21 Q: How can you tell when it was fired?

22 A: There is an impression, what they call a little dimple in
23 the -- where the firing pin would have struck.

24 Q: And were those three expended shells all in sequence or
25 were they ---

1 A: Two of them are in sequence, and then a third one is out
2 of rotation.

3 Q: It skipped it?

4 A: Yes, sir; it did.

5 Q: Is that the normal way a gun would fire or would it be in
6 sequence?

7 A: No, it's not. It appears that something would have made
8 the cylinder rotate so that it would've skipped that live
9 round.

10 Q: Thank you.

11 MR. DEBUSK: The state would move Number 27 into evidence
12 at this time.

13 THE COURT: All right. Any objection?

14 MR. GALMORE: No, sir; no objection.

15 THE COURT: All right, sir. So, it's in evidence without
16 objection.

17 STATE'S EXHIBIT NUMBER 27

18 ADMITTED INTO EVIDENCE

19 BY MR. DEBUSK:

20 Q: The defendant, Devin Outen was arrested on Highway 544,
21 correct?

22 A: That is correct.

23 Q: And he was released to the custody of the police
24 department after he was released from the hospital?

25 A: Yes. He was in custody the entire time. There was

1 officers with him while he was being treated.

2 Q: Did there come a time when he had a bond hearing?

3 A: Yes.

4 Q: Would Ms. Grice have been invited to attend that bond
5 hearing?

6 A: Very much so.

7 MR. DEBUSK: Court's indulgence, Your Honor?

8 THE COURT: Yes, sir.

9 BY MR. DEBUSK:

10 Q: No further questions. Please any questions the defense
11 may have.

12 THE COURT: Cross-examination?

13 CROSS-EXAMINATION OF JOHN BRANTLY BY MR. GALMORE:

14 Q: Detective Brantly, what time did you arrive at the scene,
15 sir?

16 A: I've got here about 6:00 a.m.

17 Q: 6:00 a.m.?

18 A: Yes, sir.

19 Q: And the initial call came in about 3:30 or so in the
20 morning?

21 A: 3:00, between 3:30 and 3:45, I believe.

22 Q: And you're the lead detective on this case?

23 A: Yes, sir.

24 Q: Okay. When you arrived at the scene, was the back door
25 open?

1 A: It was closed.

2 Q: Did any of your officers report that they closed the back
3 door?

4 A: I don't recall.

5 Q: There's been some talk about a light bulb on the back
6 porch. Was there a light bulb on the back porch?

7 A: Yes, there was.

8 Q: Was the light bulb screwed in?

9 A: Not all the way; no, sir.

10 Q: The light bulb appeared to be loose?

11 A: Slightly unscrewed to turn it off, yes.

12 Q: Did any of your officers attempt to lift fingerprints off
13 of that light bulb to see who might have unscrewed it?

14 A: Other officers did not know.

15 Q: Is that anywhere in your case report?

16 A: Is it anywhere in my case report?

17 Q: Yes, where the light bulb was tested?

18 A: No. The light bulb would not have been tested for
19 prints.

20 Q: And if had been tested, it would be in your case report?

21 A: It would be, and there was a reason we did not.

22 Q: Let's talk about the crowbar?

23 A: Yes, sir.

24 Q: You indicated that there was a paint transfer on the
25 crowbar, correct?

1 A: Yes, sir.

2 Q: Did you instruct any of your officers to attempt to test
3 the paint to see if it's the same paint that was on Ms.
4 Grice's back door?

5 A: No, sir.

6 Q: And now, for the shoe impressions, I think your testimony
7 was that the shoe impressions were not tested by SLED; is that
8 correct?

9 A: Correct; yes, sir.

10 Q: What was the reason why those shoe impressions weren't
11 tested?

12 A: The way the photographs were able to be able to done --
13 to be able to show impressions in dew, you're unable to see it
14 if you take it straight down. So, you've got to take it from
15 an angle, which would've skewed the photographs just a hair.
16 They were not able to be put to scale at the time.

17 Q: So, are you referring to photographs, State's Exhibits 23
18 and 24?

19 A: They're slightly at an angle, yes, sir, to be able to --
20 to be able to pick up the impression.

21 Q: So, what you're saying is that these photographs were not
22 properly taken, therefore, SLED could not do a comparison?

23 A: They were documented to the best of the ability at the
24 time.

25 Q: Right. What kind of shoe impression is that; what kind

1 of shoe was that from?
2 A: Nike.
3 Q: What type of Nike? Is it an Air Force 1?
4 A: I believe so.
5 Q: Is the Nike Air Force 1 a relatively common tennis shoe?
6 A: It -- it's widely sold; yes, sir.
7 Q: They even write songs about it, right?
8 A: That's my understanding.
9 Q: And we have no comparison from SLED that says that these
10 shoes are the same as those, correct?
11 A: No, sir.
12 Q: Let's talk about Ms. Grice's gun. Did you run her gun
13 through the IAFIS system?
14 A: I did not; no, sir.
15 Q: What is the IAFIS system?
16 A: The IAFIS system would be the system that would be able
17 to allow comparisons in reference to striatum on a shell
18 casing.
19 Q: They could tell you if that gun had been used like in
20 another crime?
21 A: Correct, if it was -- if it was logged from previous
22 cases or if it had ever been flagged for something.
23 Q: And her gun was not checked in this case?
24 A: I did not check the gun.
25 Q: Do you know if the firearm had been reported stolen?

1 A: No, I don't believe so; no, sir.

2 Q: Did you check to see if had been reported stolen?

3 A: Yes. It was cleared through NCIC.

4 Q: All right. Did Ms. Grice have a concealed weapons
5 permit?

6 A: No.

7 Q: Was Ms. Grice charged with any charges as a result from
8 this shotting?

9 A: Not at all.

10 Q: Fingerprints. Did your officers lift any fingerprints in
11 this case?

12 A: No.

13 Q: From anywhere?

14 A: No.

15 Q: Were Mr. Outen's prints found on the back door?

16 A: No.

17 Q: Were Mr. Outen's prints found in Ms. Grice's home?

18 A: No.

19 Q: Did she indicate to you that the suspect entered her
20 home?

21 A: She stated to me that she could hear something scraping
22 her back door, that she felt -- it felt that the back door was
23 shaking, stated to back up, she got a gun, and she was able to
24 see a bar coming through the door. Stated it was a flat tool
25 of some kind and that the top lock was locked, deadbolted.

1 She grabbed the gun and the dog and the phone and ran out the
2 front door.

3 Q: Okay. And subsequent to that she also gave a written
4 statement, correct?

5 A: Correct.

6 Q: Did she identify a suspect in this case?

7 MR. DEBUSK: Your Honor, I would object to this. This is
8 -- Ms. Grice was not confronted with these questions at the
9 time she testified and they can't go into it now.

10 THE COURT: I appreciate that. I'm gonna allow the cross
11 examination. You may proceed.

12 BY MR. GALMORE:

13 Q: Did Ms. Grice identify a suspect in this case?

14 A: Initially when I spoke with her and interviewed her, she
15 did not specify a suspect.

16 Q: As she -- all right. Was Ms. Grice provided a photo
17 lineup in this case?

18 A: She was not.

19 Q: Thank you, sir. No further questions.

20 THE COURT: Redirect?

21 REDIRECT EXAMINATION OF JOHN BRANTLY BY MR. DEBUSK:

22 Q: Now, Ms. Grice suspected or accused or any crimes?

23 A: No, not at all.

24 Q: Was she the victim here or was she a suspect?

25 A: Very much a victim.

1 Q: You didn't think she broke into her own house?

2 A: No, no.

3 Q: Okay. When you are on your property, do you need a
4 concealed weapons permit to have a gun?

5 A: Not whatsoever.

6 Q: So, was she in any way in violation of the law carrying a
7 gun?

8 A: Not at all.

9 Q: Thank you.

10 THE COURT: Anything on those questions?

11 MR. GALMORE: No, sir.

12 THE COURT: All right, sir. You wish the witness to be
13 excused ---

14 MR. DEBUSK: Yes, Your Honor.

15 THE COURT: --- or to step down?

16 MR. DEBUSK: Step down.

17 THE COURT: All right. Step down.

18 MR. BRANTLY: Thank you, Your Honor.

19 MR. DEBUSK: We'd ask that Investigator Lewis be excused
20 at this time, Your Honor.

21 THE COURT: All right. Very good. Since transfer the
22 property. All right.

23 All right. Investigator, you are released from your
24 subpoena and may go back to your other duties.

25 Thank you, sir.

1 All right. Further witnesses on behalf of the state?

2 MR. DEBUSK: No, Your Honor, the state rests.

3 THE COURT: All right. Very good.

4 BY THE COURT:

5 THE COURT: All right, ladies and gentlemen, the state
6 has ended its presentation of evidence for this matter. What
7 I have to do at this point in time, there are matters of law
8 that I have to talk with the attorneys about. It should not
9 take a long period of time, but what we'll do is give you a
10 short break for about ten minutes or so, and then I'll tell
11 you where we are in the proceedings. All right?

12 So, go back to your jury room. Do not discuss the case
13 until I give it to you at the end.

14 Thank you very much.

15 (REPORTER'S NOTE: Jury exits courtroom @ 11:07 a.m. The
16 following takes place outside the presence of the jury.)

17 THE COURT: All right. Mr. Galmore, any matters for the
18 Court at this time?

19 MOTIONS:

20 MR. GALMORE: Yes, Your Honor, we would make a directed
21 verdict on this indictment. Your Honor, viewing the evidence
22 in the light most favorable even to the state at this point,
23 we feel that there is no direct evidence implicating Mr.
24 Outen. We feel that there is no substantial circumstantial
25 evidence indicating or implicating Mr. Outen. Your Honor,

1 there was testimony that there was no identification made by
2 Ms. Grice at the time. There was no photo lineup provided to
3 her. Basically, there was no direct evidence. Direct
4 evidence was the evidence perceived through your five senses;
5 I saw this, I know this to be true because I saw it. We
6 certainly do not have a photo lineup.

7 Additionally, we don't have video surveillance, or
8 anything that would be direct evidence in this case. When we
9 look at the substantial circumstantial evidence, which is what
10 the law -- standard in the law is, Your Honor, I feel that the
11 circumstantial evidence here is not substantial. We have shoe
12 impressions that apparently were not tested. We have
13 indications that a light bulb had been tampered with and that
14 was not tested. We have inconsistent testimony whether the --
15 Ms. Grice's back door was opened or closed. Your Honor, we
16 don't even know which officer searched the house. I would
17 point all this out to say, Your Honor, that there is no direct
18 evidence of Mr. Outen's guilt, and there is no substantial
19 circumstantial evidence of his guilt.

20 THE COURT: Very good. Reply by the state?

21 MR. DEBUSK: Thank you, Your Honor. Ms. Grice testified
22 that she saw the person who was breaking into her house and
23 the light in the kitchen -- the door -- the kitchen light
24 because the door was opened slightly. She saw person the next
25 day at the bond hearing and said that it was the defendant,

1 Devin Outen. In addition, there's substantial evidence in
2 that the car registered to the defendant's address was found
3 at the scene. In the vehicle was a bar similar to what Ms.
4 Grice described was being used to break open her door. It has
5 white paint on it similar to the paint on Ms. Grice's door.
6 Ms. Grice saw her assailant get into that vehicle. The
7 defendant ran the vehicle into the ditch, fled the scene, was
8 found within a mile of the scene of the accident with a bullet
9 wound consistent with what would've been attained by him after
10 being shot at by Ms. Grice.

11 In addition, there were femoral foot impressions on the
12 back deck that matched the same kind of shoe that he was
13 wearing. They were not an exact match, but they do eliminate
14 anybody that wasn't wearing that particular brand of shoe or
15 that particular style shoe. There is substantial
16 circumstantial evidence as well as direct evidence in this
17 case.

18 THE COURT: All right. Thank you very much.

19 All right. Regarding a directed verdict motion, the
20 Court is concerned with the existence or non-existence of
21 evidence. I don't judge credibility or believability, that's
22 for the jury. The Court only determine whether or not the
23 evidence exists. The defendant would be entitled to a
24 directed verdict when the state fails to produce evidence of
25 the offense charged, and I look at all of the evidence in the

1 light most favorable to the state, that is to the non-moving
2 party in this particular case.

3 There is direct evidence and substantial circumstantial
4 evidence. Direct evidence would be that Ms. Grice a number of
5 times indicated that she saw just one person, that she
6 indicated that she saw him opening the door, that she saw his
7 face, that she believed that he got in.

8 Certainly, there was a object entering through from the
9 outside to the inside that was forcing the door. So, an
10 object put in motion circumstantially by the defendant.

11 She did have a chance to appear at the bond hearing, and
12 in response to questions indicated -- and that was in response
13 to a cross-examination question, she indicated it was the same
14 person she saw that night or -- you know, the previous night
15 when she indicated she saw the defendant and indicated there
16 was light inside her house in the kitchen and the hallway,
17 even though the back door light was inoperable.

18 She also indicated that the defendant was approaching her
19 in her front yard, she fired at that individual, which stopped
20 that individual and caused him to go away. The defendant in
21 this matter was later found in close proximity to this
22 incident location with a gunshot wound.

23 There is circumstantial evidence of how the shoes -- and
24 again, looking at all the testimony provided, I find there's
25 more than sufficient evidence, if that evidence again is

1 believed by the jury. But, the evidence does exist, and
2 therefore, I would respectfully decline to grant your motion
3 for a directed verdict.

4 Thank you very much.

5 MR. GALMORE: Thank you, sir.

6 THE COURT: All right. Further motions from the defense
7 at this time?

8 MR. GALMORE: No, sir.

9 THE COURT: All right. Very good. Before we take a
10 break, I think we can probably proceed on. The state ready to
11 proceed on with closing arguments?

12 MR. DEBUSK: Yes, Your Honor.

13 CHARGE CONFERENCE:

14 THE COURT: Obviously, you would give your full and
15 complete argument. There's no evidence presented by the
16 defense, and so the defense would have the final argument.

17 Regarding the charge, you know, I'll be talking to the
18 jury about the things we normally talk about, credibility,
19 believability, direct, and circumstantial evidence. I will
20 include to the extent the state relies on circumstantial
21 evidence, all circumstances must be consistent with each
22 other, and when taken together point conclusively to the guilt
23 of the accused beyond a reasonable doubt. I will talk to the
24 jury that the defendant did not appear and tell them it's not
25 part of the case. They can't use it in their deliberations;

1 they can't even use it mentally to make a decision in this
2 matter.

3 The presumption of innocence that I talked to them about
4 at the very beginning -- obviously, I'll go over that again
5 with them.

6 Reasonable doubt, the kind of doubt that would cause an
7 ordinary, reasonable person to hesitate to act. I will charge
8 them attempt. An attempt is an effort to accomplish a crime
9 which does not succeed. And attempt includes a specific
10 intent to do a particular criminal act along with an act
11 falling short of the act intended. The state must show more
12 than mere preparation and intent. There must be some overt
13 act committed in the effort to commit the crime. Intent means
14 intending the result which actually occurs, not accidentally.
15 Intent may be shown by acts in conduct of the defendant in
16 other circumstances from which you could naturally and
17 reasonably infer intent.

18 Attempted burglary first degree, that, you know,
19 dwellings, the state must prove beyond a reasonable doubt that
20 the defendant entered the dwelling without consent. A
21 dwelling is building, portion of a building which a person
22 ordinarily sleeps. In order to prove the defendant entered
23 the dwelling. The state does not have to show the defendant's
24 entire body entered the dwelling. The smallest entry is
25 sufficient. It may be a part of the body, such as a hand or a

1 foot or even an instrument, such as a hook or other
2 instrument. In addition, the state does not have to prove
3 that force was used to gain entry. The state must prove
4 beyond a reasonable doubt the defendant intended to commit a
5 crime at the time of entry. Mere entry is not burglary; on
6 the other hand, if the defendant intended to commit a crime at
7 the time of entry, it's burglary, even if the attempt was
8 abandoned. And, again, intent may be shown by acts and
9 conducts of the defendant and other circumstances from which
10 you could reasonably and naturally infer intent.

11 And, finally, the state must prove beyond a reasonable
12 doubt that the defendant entered or remained in the dwelling
13 in the nighttime. Nighttime is the period between sunset and
14 sunrise during which there is not sufficient daylight to
15 recognize a person's face except by artificial light or
16 moonlight.

17 That's the Court's intention regarding the charge. Any
18 changes or additions requested by the state?

19 MR. DEBUSK: None, Your Honor.

20 THE COURT: From the defense?

21 MR. GALMORE: No, sir.

22 BY THE COURT:

23 THE COURT: All right, gentlemen, let's take a break,
24 about ten minutes, and then we'll come back in and go into the
25 closing arguments and the charge. All right?

1 MR. GALMORE: Yes, sir.

2 THE COURT: Thank you very much.

3 MR. DEBUSK: Thank you, Your Honor.

4 **RECESS**

5 *****OFF THE RECORD*****

6 **ON THE RECORD - 11:26 A.M.**

7 THE COURT: All right. Gentlemen, just so that you know,
8 the -- we got the verdict form for the jury is pretty
9 straightforward. We've got the caption of the case, the usual
10 form, attempted burglary in the first degree, the charge of
11 attempted burglary in first degree, we, the jury, by unanimous
12 consent, find the defendant, two choices, not guilty or
13 guilty, and a place for the foreperson to sign and the note
14 that once you've reached a verdict, knock on the door and
15 notify the bailiff. All right?

16 All right. with that, the state ready for the jury to
17 come in?

18 MR. DEBUSK: Yes, Your Honor.

19 THE COURT: All right. Defense?

20 MR. GALMORE: Yes, sir.

21 THE COURT: Ask the jury to come in, please.

22 (REPORTER'S NOTE: Jury enters courtroom @ 11:28 a.m.)

23 THE COURT: All right. Mr. Galmore, what's the position
24 of the defense at this point in time?

25 MR. GALMORE: The defense rests, Your Honor.

1 THE COURT: All right. Very good. And the Court
2 reaffirms all the rulings that I have made previously
3 regarding the motions by the defense, and any renewed motions
4 by the defense.

5 All right. At this point in time, ladies and gentlemen,
6 we have finished the evidentiary portion of the trial. What
7 we're gonna go into now are the closing arguments of the
8 attorneys. Now, I remind you as I told you earlier, opening
9 statements and closing arguments, not evidence, can't be
10 considered by you as evidence, but they're important. They're
11 each side's summation to you of their arguments on the
12 evidence, what has been presented to you, and then obviously,
13 what they're asking you to do as a result of your unanimous
14 verdict in this particular matter. Right after that, I will
15 give you the charge on the law and then we'll give the case to
16 you, submit the case to you for your deliberations and
17 unanimous decision.

18 So, with that, Solicitor?

19 MR. DEBUSK: Thank you, Your Honor, may it please the
20 Court?

21 THE COURT: Yes, sir.

22 CLOSING BY DEBUSK:

23 MR. DEBUSK: Ladies and gentlemen, this case, as short as
24 it was, about one thing, about -- primarily about one thing,
25 about the story of the one eyewitness, Phyllis Grice. She was

1 there when it happened. She was the victim of it. It was
2 3:45 in the morning, she was in her trailer alone watching
3 T.V., dozing in her recliner. She hears a sound. She hears a
4 sound and then comes to the kitchen, she goes in the kitchen
5 and turns on the light, and it's somebody rattled that
6 doorknob. She said, I heard that, sounded like somebody
7 trying to get in, so I rapped on the door and said, go away, I
8 got a gun. Instead of going away, whoever is out there,
9 whatever noise they'd made, perhaps they were moving that
10 furniture that was mentioned -- sticks a pry bar through the
11 door. One Ms. Grice said looked like this. He pries that
12 door open to the point where it wouldn't latch anymore. Ms.
13 Grice said she had to have the door replaced because it
14 wouldn't close anymore. And they get that door open. It
15 comes open a little bit; in the light that's coming from the
16 kitchen, she sees a face in that door. She's got to decide
17 what to do. Of course, her immediate attention is focused on
18 that face, fear, she's looking three feet away, lit up by the
19 kitchen door. And fortunately for us, she made the right
20 decision; she decided to run. She'd already got her phone,
21 she'd already got her gun when she heard that noise on the
22 back deck. She ran for the front door, away back door towards
23 the front, and the dog went with her, and she ran out in the
24 front yard.

25 She told you the next day when she went to a bond hearing

1 for Devin Outen, after he had been arrested, she saw that face
2 she say in the doorway again. That guy at the bond hearing
3 was the guy she saw breaking in her door. From three feet
4 away, well lit by the kitchen light. Fear focusing her
5 attention. She saw only one person at the scene. All the
6 time she said she saw only one person. One person breaking in
7 the door, one person running around the trailer coming at her,
8 one person getting in the car, one person disappearing after
9 the car wrecks in the ditch.

10 Now, this is good spot to stop a minute, step back for a
11 minute and talk to you why this is attempted burglary first
12 instead of burglary first. It's quite possible that there was
13 a burglary, that the defendant did get in the door as Ms.
14 Grice feared and suspected. But, she didn't see that. She
15 saw the intent and that's what we can prove. We know the
16 attempt happened. Maybe, probably, a burglary happened, but
17 we know the attempt happened. We know that he broke the door
18 open. We know he opened the door. Fortunately, maybe for Ms.
19 Grice, she was able to retreat before she saw whether he came
20 in or not. That's why we're looking at attempt instead of
21 burglary. But, in the end, it makes no difference. It's just
22 as illegal to attempt a burglary as it is to complete the
23 burglary.

24 Let's get back to Ms. Grice's story. She ran for safety.
25 She saw that she was in a bad spot with someone she didn't

1 know, and breaking her door, not knocking. This wasn't the --
2 like I said, not the Fuller brush man, not the Dominos man
3 bringing a pizza, it was somebody breaking the door in. She
4 ran out. She runs out of the front door with her phone,
5 already talking to 911, and her gun and her dog. Now, you got
6 the 911 tape in evidence. You'll have the ability to listen
7 to it. You can listen to that tape all you want, and you know
8 what happened after she connected with 911. Frantic, she runs
9 out in the front yard; there's somebody breaking into my
10 house; I need help; send the police. And she stalls them
11 trying to get the police to come. You hear that first shot;
12 go away, go away, leave me alone. Then she saw that when she
13 saw that individual that was breaking into her back door
14 coming around the house towards her; she shot him. After that
15 first shot, a few seconds passed by, another shot. She said
16 he's coming back. She was firing for her own safety. This
17 person who was breaking through the door was now coming at
18 her, and she said with his hands outstretched like he was
19 gonna her. She fires two shots, one of which hits him.
20 Exactly what you expect somebody to do when they fear for
21 their life, and she was carrying a gun. It's on her own
22 property. You don't need a permit to carry a gun on your own
23 property. She was well within her rights to defend herself on
24 her own property that night of an unknown assailant. Two
25 shots and then he retreats. She said it looks like he went

1 back towards the woods. You'll have the tape; you can listen
2 to it. Imagine the fear. Here she is an older lady by
3 herself, nobody running to her assistance, in her front yard
4 with her puppy, a small dog, and a gun. He could have come
5 from anywhere; either end of that trailer, he could've gone
6 into that back door which had already been broken open, coming
7 at her from -- out of her own front door. He could have run
8 around the woods and come out behind her. Imagine the fear
9 she's experiencing at this point. She did the one sensible
10 thing which was to go out in the street where she could see
11 around her where there wasn't any bushes for somebody to hide.
12 You can imagine her relief when she saw that car next door,
13 saw the door open, a light would have come on when you open
14 your door -- your car door at night and see that light, and
15 she said that's the guy, the guy getting in that car that I
16 shot at alone. He closes that door, puts the lights on, backs
17 out, and I bet you Ms. Grice wished that he had gone and put
18 it on that street and got out of there, and she could have
19 just had the police come and told the story. But he didn't.
20 Unfortunately for him, he drove right into the ditch. Ran his
21 car right there. Left the most incriminating evidence other
22 than Ms. Grice's testimony. That is the car registered to his
23 own address stuck in the ditch right there by the burglary
24 scene. So, we're back to the fear for Ms. Grice. That car
25 can't leave. She doesn't know where the assailant has gone.

1 She could tell nobody got out on the passenger side. She
2 doesn't know what happened on the driver's side; is he in the
3 woods doubling back behind her; is he back in her house again.
4 You can hear her. You can hear on the 911 tape, she's
5 frantic. She's waiting for the police standing there with
6 that gun. When the police come, she doesn't even want to
7 believe it's the police, she's still afraid it's somebody
8 else; maybe he's called somebody to come help him. She
9 finally realizes it's the police. It's Officer Barnes, the
10 lady officer who testified, and she persuades her to put the
11 gun down, calms her a little bit, puts her in her car, secures
12 the gun in the car, even lets the dog in the car because the
13 dog was frantic, too, had -- wanted to be with her momma.

14 Ms. Grice, again, made the wisest choice to be in the
15 street and wait for help. The defendant probably made his
16 wisest choice, which was to get out of there. Where did he
17 go? Well, Officer Guskiewicz, when he came in, saw a black
18 male standing in the -- on the phone by the corner on 544; it
19 could have been him. More likely it's him because when the
20 sergeant came and talked to him, he ran into the woods right
21 there on 544. And just down the road, a little while later,
22 they arrest the defendant, Devin Outen, and he's got a bullet
23 hole in him. The defendant -- the police got it when they got
24 there, it was Officer Barnes at first, but eventually a few
25 police got there. They searched the area, and they searched

1 the house. They determined the defendant had fled the scene.
2 The person who had done this to Ms. Grice had fled the scene.
3 And the crux of this story is, like I said, Ms. Grice's story,
4 she was there; she saw him. She saw the face in the door.
5 She saw what was happening. She fired the shot that marks the
6 defendant as the burglar. But there's more to this case and
7 the rest of the case is there corroborating what Ms. Grice
8 says. All those officers went there to assist her, and they
9 found more incriminating evidence. Remember Officer Barnes,
10 she got there, she found Phyllis Grice scared, frantic, puts
11 the car; there's that truck in the ditch. As soon as Officer
12 Barnes pulls up, that truck is already there stuck in the
13 ditch. No defendant in the area all the officers got there
14 and searched most of the area. Someone ran the registration
15 of the truck at one point in time, it belonged to, I think, a
16 Ms. Ruhle. Ruhle, I think the officer testified to or,
17 actually, Detective Brantly testified to.

18 Then I brought in the next officer, Fred Rash. Fred Rash
19 was the detective, at that time he was a patrol officer, when
20 he arrived at the scene they decided what are we going to do
21 to investigate this, and they assigned Officer Rash to go find
22 the registered owner of that car. So, he goes to the address
23 that that car is registered to, and he goes there, and at that
24 address in the parking lot, he finds Ms. Ruhle speaking on her
25 phone; she's home, it wasn't her. And he said this is -- he

1 was caught within an for an hour, So, this was far less than
2 an hour after the burglary, this Ms. Ruhel is already home.
3 Somebody else had her car. And the person she was on the
4 phone with, Devin Outen. Lives at the same house that she
5 does, roommate, girlfriend, boyfriend; they were together.
6 And he's talking on the phone. So, Officer Rash says, well,
7 let's go back to the area of the crime and see if we can
8 locate this fellow. We believe he might've been shot; he may
9 need help. They take her down there and Officer said that it
10 was probably within an hour -- this was far less than an hour
11 after the burglary and Ms. Ruhle is already home. Who does
12 have the car; the person who she is on the phone with, Devin
13 Outen. Registered -- lives in the same house as she does,
14 roommate, girlfriend, boyfriend, they are together and he's
15 talking on the phone, and Officer Rash says well, let's --
16 let's go back to the area of the crime and see we can locate
17 this fellow. We believe he might have been shot. He may need
18 help. They take her down there and Officer Guskiewicz said
19 that -- Officer Guskiewicz was there and Officer Rash said
20 Guskiewicz started talking to him on the phone. Eventually
21 they locate him and arrest him and what did -- what did Fred
22 Rash say Devin Outen said when they arrested him; just take me
23 to jail, I don't have to go to the hospital. If you haven't
24 done anything wrong, why are you going to jail? He knew at
25 that time; just take me to jail.

1 Officer Guskiewicz, when Officer Rash gets Ms. Ruhle down
2 there to the -- near the scene. He sees that she's talking to
3 his individual on the phone, Devin Outen. Detective
4 Guskiewicz -- when Officer Rash gets Ms. Ruhle. Eventually he
5 gets across the point that I'm the police. Where are you?
6 Let's get your hands up and get you some help. He has to
7 persuade him, persuade him to come out. Finally after talking
8 to him for a while, it took a while, he asked him to tell them
9 where he is, at Fox Pizza over here; I'm over here, I see
10 lights over there. They find him at a Garden's Direct or
11 something, plant store. I gave you a map of it. They talk
12 him out of the woods, they got him there, arrested him. What
13 did he have; he had a bullet wound, a through and through
14 bullet wound that marks him as the person who broke into Ms.
15 Grice's trailer. The person Ms. Grice shot at and at least
16 one of those shots hit him. They called EMS to treat him, he
17 was taken to the hospital, it was probably around 5:00 in the
18 morning. By 7:00, he's out. He's in the custody of the Horry
19 County Police. Identification by the bullet wound, but there
20 was more to it than that. Ms. Grice saw the face, recognized
21 the face at the bond hearing. The shoe, I'll talk a little bit
22 more about that later. Very importantly, the car registered
23 to his address right there at the scene of the burglary left
24 in the ditch.

25 Next was Crime Scene Investigator Lewis. All he did was

1 process the vehicle. In the vehicle he finds a bar, a pry
2 tool -- he actually found a lot of tools. All the tools are
3 in the back of that car hidden down under his clothes and a
4 big speaker and -- and bottles. There was one tool that was
5 not hidden; it was out in easy access. The one tool that fit
6 the description Ms. Grice gave you. On that tool -- you can
7 look at it -- it's got scrapes and what appears to be white
8 paint transfer. You can see the color of the door. But
9 what's more important in corroborating Ms. Grice's description
10 of the bar the defendant was holding, is where that bar was
11 found. It was in the front passenger seat. That proves that
12 there wasn't anybody else at that scene, because if there had
13 been somebody sitting in that seat, if there had been a second
14 person or somebody else had gotten in, it wouldn't have been
15 there. It would have been moved, it would have been in the
16 floor, it would be stuck between the seats, it wouldn't have
17 been there. One person at the scene, one person came in that
18 vehicle that was registered at the defendant's address, one
19 person broke in that back door, one person ran at Ms. Grice
20 and got shot. That one person was the person arrested that
21 night with a bullet hole in his side. And as soon as he was
22 arrested say, just take me to jail. I don't have to go to the
23 hospital, just take me to jail.

24 Detective Brantly, Mr. Brantly told you about several
25 things. One of which was the shoe. Now, the shoe imprint

1 that was on the porch was just dew. It was just a little
2 moisture there. You can see it, you had to look at it at an
3 angle to see it. You couldn't photograph it directly overhead
4 as you would if you wanted to compare it, and it dried up
5 right away, but they got a picture of it before it went away.
6 And because we couldn't get those good pictures, we can't say
7 that is the shoe that made these impressions. But what you
8 can say is the person who was breaking into that back door was
9 wearing that kind of shoe. It eliminates everyone who was not
10 wearing that type, that brand of shoe, even if it's a common
11 one, you're still eliminating almost everybody in the area.

12 Again, the bullet wound. He had bullet wound through and
13 through. It would have been nice if they could've recovered
14 the bullet and maybe taken it to SLED and compared it. They
15 probably should've taken that bar and compared it, but I guess
16 nobody thought of that.

17 We told you that the defendant and Ms. Ruhle lived at the
18 same address in that, it's an apartment 28-H in that same
19 apartment building. That car would've available to him for
20 his use. In fact, Officer Guskiewicz even said that he had
21 talked to him before in non-law enforcement duties passing the
22 time of day at a gas station, and he had been in the same kind
23 of car. That was the car he usually drove.

24 Something else that was told to you by Detective Brantly,
25 was about the gun that Ms. Grice used to shoot at her

1 assailant and hit him, that there were three shells fired.
2 You can see the indentation on each shell, but they weren't
3 sequenced as you would expect if somebody just pulled the
4 trigger three times. Somehow, the barrel had been rotated.
5 Why is that important; it's important for one thing, it
6 corroborates something Ms. Grice said. She said she doesn't
7 know how that third shot went off. She thinks she was
8 struggling with the dog, she dropped the gun and it went off.
9 That would be consistent with somehow the gun going down,
10 maybe the cylinder popping open, putting it back and when she
11 did that, she accidentally fired the gun. It shows that she
12 is telling the truth. It's consistent with what she told.
13 It's consistent with the accidental discharge of that gun on
14 that third shot. She admits firing two shots at him
15 intentionally. The third one she said, I don't remember it
16 firing. Maybe that's what happened. And that's why the three
17 shots are not consecutive. Again, just important to
18 corroborate what Ms. Grice says.

19 So, there you have it, a combination of direct and
20 circumstantial evidence. Direct as Ms. Grice sees this
21 individual in her back door in the light, and the next day at
22 the bond hearing, Devin Outen, that's the man who broke into
23 my house. Direct evidence of a guilty Devin Outen. And then
24 there's all this other circumstantial evidence; the car
25 registered to Devin Outen's address, seen -- which -- same

1 kind of car that was seen driving by Detective Guskiewicz on a
2 previous occasion was at the scene stuck in the ditch. In
3 that car, separate from all the other tools in the vehicle, a
4 bar consistent of that described by Ms. Grice. On it, white
5 paint, similar to the paint on the back door of Ms. Grice's
6 house, sitting in the front seat proving there was no
7 passenger. Further, there is a shoe impression that was seen
8 on -- very femoral, but still photographed, shoe impression on
9 the back porch showing that whoever made that shoe impression
10 wore the same kind of shoes, the same type of shoes as the
11 defendant when he was arrested. What's more, there is a
12 defendant found in the area hiding in the woods. It took the
13 officers some time to get him out of the woods, coax him out.
14 That defendant had a bullet hole through him. Then you had
15 one other little bit of I would call direct evidence, that is
16 when they arrested him, just take me to jail. I don't have to
17 go to the hospital; take me to jail. Direct and
18 circumstantial evidence proving Devin Outen was the one who
19 broke into or attempted to break into Ms. Grice's house.
20 Proof beyond a reasonable doubt.

21 Now, I want to go through the elements of the crime. The
22 Judge will give you the law, he'll tell you what the law is,
23 and that's the law you will apply to this case. I've sort of
24 previewed telling you how I think the evidence fits the
25 elements required here.

1 First, it has to be attempting to enter a dwelling.
2 Attempt to enter is prying the door open with the bar.
3 Whether he got in or not, he certainly attempted to enter. A
4 dwelling, that's a place where someone lives. This was Ms.
5 Grice's home. This trailer was her home. That building that
6 is a trailer was her residence. With intent to commit a crime
7 therein; now, had he completed his entry and Ms. Grice not
8 heard him, if she'd been asleep in the back -- back bedroom,
9 perhaps we would've found out what his intent was when he got
10 in there, because he would've done it. But you can infer from
11 the circumstances that he did not have -- that had intended to
12 commit a crime, he got in the house. One, you don't break
13 open a back door if you're going in without bad intentions.
14 He tore open that door to the point where it wouldn't close
15 anymore. You have pictures of the damage. At any case, he's
16 getting for bad purposes. Furthermore, the T.V. was on. Ms.
17 Grice went in the kitchen. She said she turned on the kitchen
18 light. She said she rapped on the door. She said she said to
19 -- hollered at whoever was on the other side of the door, go
20 away, I got a gun; and he still stuck a crowbar in there and
21 attempted to break the door open. And when Ms. Grice, even
22 though it was wise in retreating, after she saw that door was
23 open and the person on the other side, retreated out the front
24 door. He went out the trailer and went after her. He didn't
25 go in that trailer and get what -- anything else. He went

1 after her. For whatever reason, she seems to have been the
2 focus. Maybe he went after her because she was on the phone
3 calling the police and he wanted to stop that. But again, you
4 can infer from the circumstances, again, he attempting to
5 commit a crime when he went in that trailer. Fortunately for
6 Ms. Grice and all of us, he did not get to complete that
7 crime. There was something -- some evil intent in his mind
8 when he broke open that door with the pry bar.

9 Nighttime, you heard Ms. Grice say it was nighttime. You
10 heard the first responding officer, Officer Barnes, say it was
11 dark; it was nighttime. You heard Officer Brantly said when
12 he got there about 5:00 in the morning, it was still
13 nighttime. 3:45 in the morning anywhere south of Alaska or
14 the Yukon territory, it's dark even in July. It was
15 nighttime.

16 Burglary first is entering a dwelling with the intent of
17 commit a crime therein and then having a aggravating factor.
18 The Judge will read you several of them. The one we're
19 looking at is in the nighttime. That's the one that's been
20 proven, but please listen carefully for that. All of it
21 points to the same conclusion, the defendant is guilty of
22 attempting to -- attempted burglary first. The victim, Ms.
23 Grice; the date July 6th, 2018. Identification by the
24 eyewitness who saw him in the doorway; by the bullet Ms. Grice
25 put him;, by his car being at the scene; by him wearing shoes,

1 those same type of shoes the person on the back porch had
2 worn; the car having in it the bar that's consistent with what
3 Ms. Grice saw; it even has paint transfer on it. All of this
4 points to one conclusion, that Devin Outen committed this
5 crime. That's proof beyond a reasonable doubt, and the Judge
6 will tell you what proof beyond a reasonable doubt is. He'll
7 give you some instructions. He'll tell you things like it's
8 proof that leaves you firmly convinced. He can't give you a
9 formula; he can't say percentage wise. He can't say it's like
10 yards on a football field. He'll tell you things like that
11 leaves you firmly convinced. That's because in the end, it's
12 a standard that comes from you. You're a cross section of the
13 community. You get to decide, is the proof sufficient here to
14 hold Devin Outen accountable for his actions of the early
15 morning hours of July 6th, 2018.

16 I would argue all this evidence points to one conclusion
17 and one just verdict and that's guilty.

18 Thank you very much.

19 THE COURT: All right. Mr. Galmore?

20 CLOSING BY GALMORE:

21 MR. GALMORE: Ladies and gentlemen, there are a couple of
22 legal concepts that we need to talk about, because these
23 concepts will come into play as you go through your
24 deliberation process. The first thing I want to discuss with
25 you is called credibility. Credibility is a fancy way of

1 saying believability. Do you believe what the witness is
2 saying? You can believe some of what a witness says, all of
3 what a witness says, or none of what a witness says; and that
4 applies to every witness in this case. And this case is
5 unique because all of the witnesses were police officers
6 except for Ms. Grice. So, we need to discuss the credibility
7 of Ms. Grice.

8 She said she saw the suspect with a kitchen light, the
9 door was cracked open, and she was able to see. Well, I have
10 a few problems with that statement. Problem number one is
11 that that statement is not listed anywhere in the paperwork.
12 I asked was a written statement done for Ms. Grice? Yes.
13 Does she say in her written statement I can identify a
14 suspect? No. We've heard the 911 tape; that's Ms. Grice in
15 her own words. Does she say I can identify it was a black
16 male, it was a white male, he's 6'9" and he's 5'8"; she
17 doesn't do an identification for a person that now claims to
18 be able to identify him. Now, this was a year-and-a-half ago.
19 I dare say I can't tell you everything that went on a year-
20 and-a-half ago myself. I doubt that anyone could accurately
21 tell us what happened a year and a half ago. So, with regard
22 to the credibility, I believe that perhaps there was a little
23 bit of stretching of the truth on Ms. Grice's part.

24 Now, let's look at the evidence. Evidence comes to you
25 in two forms; direct evidence, and circumstantial evidence.

1 So, all this stuff about Ms. Grice falls in the direct
2 evidence category, because direct evidence is the evidence
3 that you perceive with their five senses. I know this to be
4 true because I saw it, I smelled it, I heard it. And in this
5 case, she's saying she saw it, even though she didn't tell
6 anybody that night she saw it. The solicitor says, oh, don't
7 worry about that night. The next day, she identifies him in a
8 bond hearing. Again, not written down anywhere, no notation
9 that says on July 7th, 2018, Ms. Grice made an identification
10 at the bond hearing. And besides, it's easy to recognize
11 somebody at a bond hearing. I'll give you an example. The
12 police arrest a suspect, throw him in the back of a squad car,
13 drive the squad car over to the victim's house, and they say,
14 is that person in the back of this squad car the one that
15 committed the crime? Needless to say the victim is going to
16 say yeah, that's him. Why, because he's the guy sitting in
17 the back of a squad car. In this case, yeah, that's him.
18 Why, because he's the guy being brought out for the bond
19 hearing for burglary of your home. That's why I go back to
20 what was said that night, what was written down that night.
21 Not what has said a year and a half later; what was said that
22 night. And at no point on July 6th of 2018 did Ms. Grice say
23 she identified him. We went through it with the officers.
24 Was there a photo lineup? No, one wasn't done. Was there
25 video surveillance at the home? No, there wasn't video

1 surveillance. Did she identify him to you? No, she didn't
2 identify him to me. Go to the next officer. Did she identify
3 him to you? No, she didn't identify him to me. No direct
4 evidence. The direct evidence that we have is subject to
5 credibility review by you.

6 So, now, let's talk about the circumstantial evidence.
7 Direct evidence is evidence you perceive with your five
8 senses. Circumstantial evidence is a chain of events that
9 leads to a conclusion. Simple example, two people go into a
10 room, a gunshot is heard, one person comes out; the other
11 person is in the room deceased. Conclusion, the one that's
12 alive shot the one that's dead. But see, that circumstantial
13 evidence and that example shows a problem with circumstantial
14 evidence. When we conclude that the live person shot the dead
15 person, that's only one possible conclusion. Because we're
16 concluding, we're guessing. We can also conclude that the
17 deceased person shot himself. Totally different outcome; same
18 evidence. Two people go in a room, hear a shot, one comes
19 out, the other is in there dead. So, now we've went from
20 murder to suicide with the exact same evidence, and that's the
21 problem with this case. The circumstantial evidence, you can
22 add it up and say that Devin Outen tried to break into Phyllis
23 Grice's home. You can also add it up and say there's no
24 actual evidence that he did anything. And let's talk about
25 that.

1 I asked these officers about her door being open. She
2 said it was open, get different answers from different
3 officers from the witness stand. Detective Brantly said when
4 he got there at 6 o'clock the door was closed. The picture of
5 the door is closed. The reason why I asked, maybe there's a
6 fingerprint on the door; maybe there's DNA on the door; maybe
7 that stuff can be used so that we could reach a conclusion,
8 but DNA wasn't taken, fingerprints were not taken. Question
9 to Detective Brantly was, Did your officers lift any prints
10 from anywhere in this whole case, anything? No. There's
11 testimony about a light bulb. The lightbulb seemed to be
12 unscrewed. Theory they aimed at, it would make it easier to
13 break into the home to go unscrew the light bulb by the back
14 door and then you can break in without being seen. Well, that
15 sounds great, but again, I need to know whose fingerprints are
16 on this lightbulb. Because if it is Devin Outen's
17 fingerprints on the light bulb, I really don't have much to
18 say; but it's not Devin Outen's fingerprints on the light
19 bulb, because nobody took the next step to test it. They talk
20 about the shoes. Okay? And we took pictures, I think you've
21 seen the pictures and they said the picture wasn't taken at
22 the right angle. Therefore, the picture could not be tested by
23 SLED in Columbia to compare it to these shoes in the box to
24 make a comparison. I get that. I wonder how come a police
25 officer doesn't know how to take a picture, but that's not a

1 big issue. Their answer is they attempted to collect the
2 evidence, they attempted to test it, couldn't confirm it.
3 Couldn't match it. As far as I am concerned, that is again no
4 match.

5 So, we have the door with no fingerprints on it, a light
6 bulb with no fingerprints on it, and these shoe prints that
7 they can't say are his. I went further to ask the question,
8 what kind of shoe is that? Air Force 1. Is that a popular
9 shoe? Yes, it is. They even wrote rap songs about it? Yes,
10 they have. The point is, everybody has got a pair of Air
11 Force 1s. This is not the O.J. Simpson trial. These are not
12 Bruno Maglis. These shoes are not distinctive. Given that
13 they're Air Force 1s, there is nothing about these particular
14 shoes that matches the print. Let's say for example, I got a
15 busted heel on my shoe. These Nike's would have a busted
16 heel; that shoe impression would have a busted heel. They did
17 not compare it to say yes, we see a unique feature of those
18 Nikes that matches the shoeprint. So, I have a door with no
19 match, a light bulb with no match, shoeprints with no match.

20 They talk about this tire iron. Not tested for prints,
21 not tested for DNA. Well, James, it's in his car. Yeah,
22 okay, everybody has a tire iron in their car. You're saying
23 that that tire iron was used to break in her house and that it
24 has paint transfer. Can somebody tell me if it's the same
25 paint? No, they cannot. We didn't attempt to test it. It's

1 not even with the shoes where we tried and we just couldn't
2 get a result. It's -- yeah, we see it, we didn't test it, we
3 didn't collect it, we didn't send it to SLED. Make your own
4 conclusions, because that's what a circumstantial case is,
5 asking you to draw the conclusion.

6 And like I said, this evidence is subject to more than
7 one interpretation. So, the most damaging piece of evidence
8 they have, Mr. Outen has a bullet wound; he was shot by Ms.
9 Grice. Does that mean that he was the person breaking in, or
10 does it mean that he was merely present at the scene? That's
11 the problem here. Did Ms. Grice shoot the wrong person?
12 Well, looking at it in that light, I suppose that explains why
13 she gets on the witness stand and says, yeah, I remember
14 seeing him distinctly, even though it's not in my police
15 report. We don't know if he got into the house, whoever got
16 into the house. We don't know who it was that attempted to
17 break into the house.

18 At the beginning, I asked you to think about one thing as
19 each witness testified, and it was this, this man committed
20 this crime. They haven't given me anything to say it's that
21 man, not a print, not a DNA, not a picture. And as far as the
22 crime, it seems that someone did try to break into our home.
23 I'm not gonna say she broke into her own home. I'm going to
24 tell you they have no proof that it was him, and that's where
25 we are. Now, when I talked with you at the beginning of the

1 case, I talked about roles and responsibilities, and what I
2 left out, I left out two -- I left out the police. They have
3 an important role here, because their job is two-fold. You
4 might not know this from T.V., but it is. Their job is to
5 gather and collect evidence on the suspect. And the flip side
6 of that is to clear people that are not involved in crime.
7 The evidence that was collected -- or in this case not
8 collected, does not help us to either say Mr. Outen did it or
9 like I said, the flip side, to clear him. Check that light
10 bulb, and if there are no prints on it, that ain't him. Check
11 that tire iron, if it doesn't have matching paint, that wasn't
12 it. But when the tests aren't done, we can't reach the
13 conclusion. So, I said I left out two people's roles and
14 responsibilities. The other is you. The 12 of you, each and
15 every one of you has a responsibility here today, and you've
16 taken an oath that says you will carry out your
17 responsibility. Your job, as the oath says, is to well and
18 truly try the issues in the case and a true verdict rendered
19 according to the law and the evidence.

20 Well, I've gone over the evidence; it's lacking. We've
21 talked about the law. The law says that you must be firmly
22 convinced of the guilt of the accused. The law says that all
23 of these circumstantial evidence pieces have to tie together
24 and point conclusively to the guilt of the accused. The
25 evidence doesn't add up; the law doesn't add up. However, the

1 state is asking you to convict anyway. Basically, what
2 they're doing is, well, we didn't do our job, but don't worry
3 about, just go ahead and say guilty. That is not how this
4 works. You have to bring evidence; it has to implicate the
5 suspect. This evidence, none of it has a fingerprint on it.
6 They haven't implicated anyone. What we know from the
7 evidence that has been presented is that Outen was out there,
8 and he was shot in her front yard. We know that someone tried
9 to break into her home. We do not know if that someone was
10 Devin.

11 Now, your job is not to carry the solicitor over the
12 finish line. Your job is to tell us, the solicitor and
13 myself, whether or not they have proved the guilt of the
14 accused beyond a reasonable doubt, and if they didn't; say
15 they didn't. It's not complicated. You just check not guilty
16 and the jury, excuse me, the solicitor will understand that
17 they did not bring you the proper evidence.

18 Very soon this case will be yours, and you will have to
19 deliberate. Each of you has your own opinion. You all come
20 from different walks of life. You did not leave your common
21 sense on the courthouse steps. So, when you're in the back
22 deliberating and looking at this evidence, I just ask you to
23 challenge yourself as I did at the beginning. Does this
24 evidence point to the, excuse me, does this man committed this
25 offense; I submit to you that he did not, and when you return

1 your verdict form to our clerk, Mr. Adler [sic], I hope that
2 you will agree with me that this should be a not guilty. I
3 thank you for your time and attention. You have done an
4 excellent job of listening and paying attention. I have no
5 doubt that you will thoroughly review the evidence in this
6 case and let us know that the state has not carried their
7 burden of proof. Thank you.

8 THE COURT: Mr. Galmore and Solicitor, if you would come
9 up and talk to me just one second?

10 (REPORTER'S NOTE: Bench conference is held off the record in
11 the presence of but outside the hearing of the jury.)

12 CHARGE TO JURY:

13 THE COURT: All right, ladies and gentlemen, it's my duty
14 and responsibility now to give you the law that you will apply
15 to the facts and evidence you've heard in this case. I told
16 you at the beginning I wouldn't indicate to you in any fashion
17 what I think the facts are. Not my job, not my
18 responsibility. It's your job and responsibility to have
19 listened to the facts and evidence and then take the law as I
20 now give it to you and decide did the state prove the
21 defendant guilty of the crime charged beyond a reasonable
22 doubt.

23 Now, in this particular matter, I told you one of your
24 jobs in being the judges of the facts in this case, would be
25 to judge the credibility, that is the believability of the

1 witnesses that testified before you. Again, reminding you,
2 using your good common sense to do that. You can believe one
3 witness several, several against one, you can believe a
4 portion of what a witness says, disregard the remaining
5 portion of it. If you've got a good sound reason for doing
6 so, you can disregard in its entirety the testimony of a
7 particular witness. You look at whether the witness has
8 exhibited to you any kind of interest, motive, bias,
9 prejudice, any kind of motive they might have in giving you
10 the testimony that they gave you from the witness stand, and
11 you can consider their demeanor; how did they appear when they
12 testified before you. Obviously, you consider the opportunity
13 for knowledge; how did they come about the information that
14 they gave you from the witness stand. You don't have any
15 friends to reward, enemies to punish, the verdict can't be the
16 result of any kind of passion, prejudice, or sympathy. It has
17 to be an examination of the facts and evidence applying the
18 law, did the state prove the defendant guilty beyond a
19 reasonable doubt.

20 Now, there are two types of evidence normally presented
21 in virtually every single criminal case, direct evidence,
22 circumstantial evidence. Direct evidence, that's testimony of
23 a person who claims or asserts to have actual knowledge of
24 certain facts. What they saw, what they heard, what took
25 place in their presence. Circumstantial evidence, that's

1 evidence that is a proof of a chain of facts indicating the
2 existence of a fact. The law doesn't make any distinction
3 between the two, a greater degree of certainty of one over the
4 other is not required, but to the extent that the State of
5 South Carolina relies on any circumstantial evidence, all of
6 the circumstances have to be consistent with each other and
7 when taken together, point conclusively to the guilt of the
8 accused beyond a reasonable doubt. If the circumstances
9 merely portray the defendant's behavior as suspicious, the
10 proof as failed. The state has the burden of proving the
11 defendant guilty beyond a reasonable doubt, and the burden
12 rests on the state whether they use direct evidence,
13 circumstantial evidence, or some combination of the two.

14 Now, in this particular matter, the defendant did not
15 appear. I instruct you and emphasize that the fact the
16 defendant did not appear is not, not a factor to be considered
17 by you in any way. You may not talk about in your jury room.
18 You may not use it mentally in making your determination. You
19 are to draw no conclusion from the fact the defendant did not
20 appear. The burden of proof, as I told you at the very
21 beginning, is always on the State of South Carolina to prove
22 the defendant guilty beyond a reasonable doubt. The defendant
23 has nothing to show to you or prove to you and that's
24 connected to what I told you about the presumption of
25 innocence.

1 At the start of the trial, the defendant is presumed
2 innocent right now. The defendant is presumed innocent unless
3 and until you believe the state has presented to you evidence
4 which you find to be credible and believable that convinces
5 you of the guilt of the defendant beyond a reasonable doubt.
6 This presumption of innocence we liken it to a robe of
7 righteousness. We place it on the shoulders of the defendant
8 at the start of the trial. It remains there unless and until
9 the state rips that robe of righteousness from the shoulders
10 of the defendant by evidence that convinces you of the guilt
11 of the defendant beyond a reasonable doubt.

12 So, what's reasonable doubt. A kind of doubt that would
13 cause an ordinary, reasonable person to hesitate to act.
14 Proof beyond a reasonable doubt is proof that leaves you
15 firmly convinced of the defendant's guilt. Now, there are
16 very few things we can know with absolute certainty and the
17 law doesn't require the State of South Carolina to give you
18 that kind of proof. What is required is if based upon your
19 consideration of the evidence, you are firmly convinced the
20 defendant is guilty of the crime charged, you must find the
21 defendant guilty. On the other hand, if you are not firmly
22 convinced the defendant is guilty of the crime charged, you
23 give the defendant the benefit of the doubt and find him not
24 guilty.

25 An issue in this case is the identification of the

1 defendant as the person who committed the crime charged. The
2 state has the burden of proving identity beyond a reasonable
3 doubt. You must be satisfied beyond a reasonable doubt of the
4 accuracy of the identification of the defendant before you to
5 convict the defendant. Identification testimony is an
6 expression or belief or impression of a witness. You must
7 determine the accuracy of that identification. You consider
8 the believability of the identification witness just like you
9 judge credibility and believability on all the matters. You
10 look at whether or not the witness had an adequate opportunity
11 to observe the defendant at the time of the offense. This
12 could be affected by how long or short a time was available,
13 how far or close the witness was, the lighting conditions.
14 Again, the burden of proof on the identification, that's on
15 the State of South Carolina to prove it to you beyond a
16 reasonable doubt that the defendant was the person who
17 committed the crime.

18 The defendant is charged with attempted burglary in the
19 first degree. So, what's attempt; attempt is an effort to
20 accomplish a crime, which does not succeed. An attempt
21 includes a specific intent to do a particular criminal act
22 along with an act falling short of what was intended. The
23 state must show more than mere preparation and intent. There
24 has to be some kind of overt act committed in the effort to
25 commit the crime. Intent means intending the result, which

1 actually occurs, not by accident. Intent can be shown by the
2 acts and the conduct of the defendant in any other
3 circumstances from which you could reasonably infer intent.

4 So, the defendant being charged with attempted burglary
5 in the first degree. The state must prove beyond a reasonable
6 doubt that the defendant entered the dwelling without consent.
7 So, a dwelling, that's any building or portion of a building
8 in which a person ordinarily sleeps. A dwelling for the
9 purpose of burglary is a building even if the resident would
10 happen to be temporarily absent. In order to prove that the
11 defendant entered the dwelling, the state does not have to
12 show that the defendant's entire body entered the dwelling.
13 The smallest entry is sufficient. It could be a part of the
14 body; a hand or foot, or even an instrument, such as a hook.
15 In addition, the state does not have to prove that any force
16 was used to gain entry. The state then has to prove beyond a
17 reasonable doubt that the defendant intended to commit a crime
18 either a felony or a misdemeanor, at the time of the entry.
19 Mere entry into a dwelling without consent is not a burglary.
20 If the defendant intended to commit a crime at the time of
21 entry, it is burglary, even if the intent was abandoned at the
22 entry. It does not matter that the intended crime was not
23 completed. Again, intent can be shown by acts and conduct of
24 the defendant and any other circumstances from which you could
25 naturally and reasonably infer intent.

1 And a final thing the state has to prove to you beyond a
2 reasonable doubt that the defendant entered or remained in the
3 dwelling in the nighttime. Nighttime is the period between
4 sunset and sunrise during which there's not enough daylight to
5 recognize a person's face except by artificial light or
6 moonlight.

7 That's the law, ladies and gentlemen. That's the law
8 that you have to apply to the facts and evidence you have
9 heard in this case.

10 The verdict form in this case, real straightforward.
11 It's got the caption of the case, State of South Carolina
12 versus Devin Lavar Outen, attempted burglary in the first
13 degree. On the charge of attempted burglary in the first
14 degree, we, the jury, by unanimous consent, find the defendant
15 not guilty or guilty. I put one before the other; don't
16 assign anything to that, I have to put one before the other.

17 A couple of things, unanimous, it means exactly what you
18 think it means. Your verdict must be 12/0. Whatever it is,
19 it can't be 11/1, 10/2, any combination thereof.

20 So, Madame Forelady, when your jury has reached a
21 unanimous verdict, you take the verdict form, you can sit
22 down. You can sit down.

23 JUROR 130: Okay.

24 THE COURT: You can sit down. You check the appropriate
25 block, whatever it is, sign your name, put today's date so

1 that when the verdict form is read by the clerk's
2 representative when you come back in the courtroom, if called
3 upon, each and every member of the jury can raise their right
4 hand and say, yes, sir, that's my verdict, so that it is the
5 verdict of each and every member of the jury. So, you make
6 sure that's the case before you check the block and sign your
7 name.

8 What I'm going to ask, ladies and gentlemen, first, we
9 did order lunch for you. I believe that it's got here, and so
10 it'll be delivered in to you. So, we did, through the clerk's
11 office did do that. And secondly, do not, do not begin your
12 deliberations until the bailiff hands to you the verdict form
13 and the exhibits. At that point in time, then you may begin
14 your deliberations.

15 As far as lunch, enjoy it. You know, y'all decide what
16 you want to do; enjoy lunch and then start deliberating,
17 whatever you want to do, that's up to you. All right? But
18 don't start until they give you all the exhibits. All right?
19 So, Madame Forelady, take your jury to the jury room, please.

20 Thank you.

21 (REPORTER'S NOTE: Jury exits courtroom @ 12:27 p.m. The
22 following takes place outside the presence of the jury.)

23 BY THE COURT:

24 THE COURT: Exceptions, deletions, additions to the
25 charge from the state?

1 MR. DEBUSK: One small thing, Your Honor. When you were
2 charging the law on burglary first, you said the state had to
3 prove entry. It was after you said about intent, but the
4 state only has to prove attempted?

5 THE COURT: Well, they do, but they have to -- they do
6 have to produce some evidence of entry.

7 MR. DEBUSK: Of attempted entry, not for attempted
8 burglary?

9 THE COURT: That's right, but still they have to produce
10 some evidence of it, and in this case, the only testimony is
11 that there was entry through a device at the very least. All
12 right.

13 MR. DEBUSK: Yes, sir.

14 THE COURT: So, I think it was consistent with what the
15 evidence was, the uncontroverted evidence was presented.

16 Mr. Galmore?

17 MR. GALMORE: No, sir, no additions or deletions.

18 THE COURT: All right. Very good. All right.

19 Gentlemen, please get with the court reporter and make
20 sure we've got all the proper evidence going into the jury
21 room, please.

22 Thank you very much.

23 (REPORTER'S NOTE: Counsel reviews and stipulates to exhibits
24 being submitted to the jury, please.

25 THE COURT: Thank you very much.

1 The laptop. Do you have a problem sending it in at this
2 point in time?

3 MR. GALMORE: No, sir.

4 THE COURT: Let's go ahead and send it in.

5 MR. DEBUSK: Yes, sir.

6 THE COURT: Thank you very much.

7 COURT REPORTER: They've approved them, Judge.

8 THE COURT: All right. Great. So, all right. Deputy,
9 do you mind assisting us in helping them take the evidence
10 into to give to the bailiff please?

11 (REPORTER'S NOTE: Deliberations commence @ 12:27 p.m.)

12 **RECESS - 12:27 P.M.**

13 *****OFF THE RECORD*****

14 **ON THE RECORD - 1:11 P.M.**

15 THE COURT: You may be seated. Thank you.

16 All right. Gentlemen, I understand that the jury has
17 reached a verdict. Is the state ready to receive it?

18 MR. DEBUSK: Yes, Your Honor.

19 THE COURT: Defense?

20 MR. GALMORE: Yes, sir.

21 THE COURT: All right. Very good. Ask the jury to come
22 in, please.

23 (REPORTER'S NOTE: Jury enters courtroom @ 1:12 p.m.)

24 **VERDICT OF THE JURY:**

25 THE COURT: Madame Forelady, has the jury reached a

1 verdict in this matter?

2 JUROR 130: Yes, Your Honor.

3 THE COURT: All right. Good. Could you hand the verdict
4 form to the clerk's representative, please?

5 JUROR 130: Yes, Your Honor.

6 THE COURT: You can sit down. Thank you very much.
7 You may publish the verdict.

8 THE CLERK: State of South Carolina, County of Horry
9 versus Devin Lavar Outen indictment number 2018-GS-26-6393.
10 On the charge of attempted burglary first degree, we, the
11 jury, by unanimous consent, find the defendant guilty signed
12 by foreperson Karen Godfrey dated February 6th, 2020.

13 Ladies and gentlemen of the jury, if this is your verdict
14 so signify by raising your right hand.

15 THE COURT: Thank you very much. All jurors having
16 affirmed their verdict by the raising of their right hand.
17 Does the state wish the jury polled?

18 MR. DEBUSK: No, Your Honor.

19 THE COURT: Does the defense wish the jury polled?

20 MR. GALMORE: No, sir.

21 THE COURT: All right. Thank you very much.

22 All right. Madame Forelady, ladies and gentlemen of the
23 jury, I want to thank you for your service. You did
24 everything that the Court asked you to do as to well and truly
25 deliberate, reach a unanimous verdict in this matter. I'm

1 gonna excuse you from your jury service for this week. You
2 earned an exemption now from coming back to Circuit Court jury
3 duty for three years. Now, if your local Magistrate or City
4 Judge or Federal Judge calls you, you got to go see them, you
5 just don't have to come see us for the next three years. So,
6 with that, thank you for your service. You are now excused.

7 Thank you very much.

8 (REPORTER'S NOTE: Jury exits courtroom @ 1:14 p.m. The
9 following takes place outside the presence of the jury.)

10 THE COURT: Motions from the defense?

11 MOTIONS:

12 MR. GALMORE: Your Honor, I would make a post-trial
13 motion for a new trial and a motion for an order in arrest of
14 judgment just challenging the sufficiency of the indictment
15 and the sufficiency of the evidence presented. Your Honor, we
16 feel that there is no direct evidence and the circumstantial
17 evidence was not substantial, and that's our showing, Your
18 Honor.

19 THE COURT: All right, sir. Very good. All right.
20 Regarding your motion for a new trial, the Court would find
21 that there was competent evidence presented by the state.
22 Again, it's not my job to judge credibility and believability.
23 The evidence existed, but I do find that there was competent
24 evidence in -- presented by the state and more than sufficient
25 to sustain the jury's verdict of guilty beyond a reasonable

1 doubt and, therefore, I decline to grant your motion for a new
2 trial.

3 MR. GALMORE: Yes, sir. Thank you, sir.

4 THE COURT: Anything else?

5 MR. GALMORE: I just wanted to give you some mitigation
6 about Mr. Outen.

7 THE COURT: Okay. One second. Solicitor, you ---

8 MR. DEBUSK: I don't have the sentencing sheet, Your
9 Honor. If I could have two minutes?

10 THE COURT: All right. You go ahead and get that
11 prepared.

12 MR. DEBUSK: Yes, Your Honor.

13 THE COURT: All right.

14 MR. DEBUSK: The indictment has the CDR Code for burglary
15 first rather than common law.

16 THE COURT: Okay.

17 MR. DEBUSK: It states the correct charge in the text, it
18 states the correct charge in the title, but it references the
19 burglary first CDR rather than the CDR with criminal attempt.
20 There is no difference in the punishment, just the CDR code.

21 THE COURT: All right. So, what you're asking to do is
22 to correctly reflect on the sentencing sheet the correct CDR
23 code, which is 1151, correct?

24 MR. DEBUSK: Yes, Your Honor.

25 THE COURT: And the indictment reflects?

1 MR. DEBUSK: 0079.

2 THE COURT: 0079.

3 MR. DEBUSK: Which is burglary first. It is attempted
4 burglary first, if it's punished as burglary first, just the
5 wrong code was put on the indictment.

6 THE COURT: All right. So, Mr. Galmore, what's the
7 defense's position regarding the correction of the CDR code.
8 The code section 16-1-80 is reflected in the body of the
9 indictment underneath attempted burglary in the first degree,
10 but the CDR code is incorrect.

11 MR. GALMORE: Yes, sir. I do not think that the CDR code
12 is a dispositive issue here. The body of the indictment is
13 proper in my opinion. I am not opposed to amending it.

14 THE COURT: All right. So, what I'm going to do then is
15 just correct the CDR code to reflect 1151 on the -- on the
16 indictment.

17 SENTENCING:

18 THE COURT: All right. All right. Solicitor, let me
19 hear from you regarding the state's position on sentencing?

20 MR. DEBUSK: Your Honor, in this case, Mr. Outen may have
21 been eligible for mandatory life without parole. I did not
22 notice this, so it's not mandatory on the Court, because he
23 has a prior most serious offense. In 2001, he has a burg
24 second violent, which itself is a serious offense; 2003 has a
25 burg third, grand larceny, five and over, petit larceny ---

1 THE COURT: All right. Hold on a second. 2001 was a
2 burglary second violent; 2003 ---

3 MR. DEBUSK: Burg third, grand larceny over 5,000, and
4 petty larceny.

5 THE COURT: Okay.

6 MR. DEBUSK: And ---

7 THE COURT: Go ahead.

8 MR. DEBUSK: Also in 2003, kidnapping, which is the prior
9 violent most serious, carjacking without great bodily harm,
10 burglary tools, and conspiracy.

11 THE COURT: All right.

12 MR. DEBUSK: All of those were from the State of South
13 Carolina, Your Honor.

14 THE COURT: All right. That is his prior record?

15 MR. DEBUSK: It is, Your Honor.

16 THE COURT: All right. Very good. And I'm sorry, 2003
17 was kidnapping, burglary tools, conspiracy, and what was the
18 other charge?

19 MR. DEBUSK: Carjacking without bodily harm.

20 THE COURT: Carjacking, without?

21 MR. DEBUSK: Yes, without, Your Honor.

22 THE COURT: All right, sir. Very good.

23 MR. DEBUSK: And, Your Honor, the victim is present and
24 may want to address the Court.

25 THE COURT: Does not?

1 MR. DEBUSK: Yes, she ---

2 THE COURT: She does wish to address -- okay. I'm sorry.
3 All right.

4 Ma'am, if you want to -- Ms. Grice, come forward, if
5 you'd like to say something to the Court. You need to state
6 your name for the record, please, ma'am, and then I'll be glad
7 to hear from you.

8 MS. GRICE: Okay. Phyllis Ann Grice, G-R-I-C-E.

9 THE COURT: Yes, ma'am. Okay. Go ahead.

10 MS. GRICE: I want to thank the Court of South Carolina
11 for giving me the privilege of this trial, and I hope you will
12 consider a good -- I'm not knowing what the right word is, but
13 -- but if he gets turned loose, I don't want him -- I hate to
14 think any other woman or girl will be put through what I've
15 been through with this man, and everything I said here was
16 true. He did break in on me, and I think he would have killed
17 me or raped me or something. I don't know why, I mean, it
18 just don't make no sense, any of it. I just -- I hope you
19 will consider not -- I just hope he gets a fair amount of time
20 for what he done. That's all I'm asking.

21 THE COURT: Thank you, ma'am.

22 MS. GRICE: Thank you for this trial.

23 THE COURT: Yes, ma'am. Thank you.

24 MS. GRICE: Thank you.

25 THE COURT: Anything else, Solicitor?

1 MR. DEBUSK: No, Your Honor. Thank you very much.

2 THE COURT: All right. All right, Mr. Galmore, let me
3 hear from you, sir, please?

4 MR. GALMORE: Yes, sir, Your Honor. Mr. Outen is 34
5 years old. He's divorced and has two children. He is from
6 Columbia in Richland County. Your Honor, he has his high
7 school education, and most recently he was working as a
8 maintenance employee at the Jewish Temple Preschool here in
9 the Myrtle Beach community.

10 Your Honor, he has been previously diagnosed with PTSD
11 and bipolar disorder. Ms. Grice said that this whole incident
12 makes no sense, and she's right about that. When you look at
13 burglary, you know, generally somebody tries to still your
14 T.V. and pawn it for drug money, but Mr. Outen doesn't have a
15 drug issue, and there are no indication of drug arrests on his
16 rap sheet. He has consistently reported to DMH and also to
17 the officers when he was Mirandized that he did not use drugs.
18 So, the motivation behind all of this is really unclear to me.

19 Your Honor, I know that he was medicated for PTSD after
20 being released from prison back in -- I can't remember the
21 exact date he was released -- but he stopped taking his
22 medication at some point and switched over to alcohol. So, he
23 was self-medicating. It looks like maybe there was some of
24 that going on the night of this burglary attempt. A lot of
25 times we look at self-medicating as a bad thing. You know,

1 you're going off your drugs and you're using street drugs
2 instead. I'm not a psychiatrist, but the way it's been
3 explained to me is that a lot of times people's medication
4 isn't working for them, and well, let me explain in a blood
5 pressure stance. There are a hundred different blood pressure
6 medications. They try you on the first one, if it doesn't
7 work and you don't like the side effects, let us know and
8 we'll switch you out to something else, and they simply keep
9 switching until they find the right medication for a person.
10 When we have people with mental health issues who -- who get
11 off their medication, a lot of times it's the same issue.
12 It's not working, and instead of going to the doctor asking
13 for something different, they will turn to street drugs or
14 alcohol to try to medicate themselves. So, I think he was
15 trying to do something to take care of mental health issues
16 that seemed to be at the root here. It appears, Your Honor,
17 that Mr. Outen routinely would hang out at the gas station on
18 544 and drink a beer and hang out with the third-shift
19 employees. It seems to be a regular thing for him, and I
20 think it's -- it's reported in the mental health records that
21 he has problems sleeping at night. So, I think that's why
22 he's routinely up and 2:00, 3:00 and 4:00 in the morning
23 drinking trying to get some sleep or just get some relief from
24 whatever is going on in his head. He had prior dealings with
25 Casey Guskiewicz; that's one of the things he told me at the

1 office. Guskiewicz is the third-shift officer that works the
2 544 section. So, anybody who is on 544, if you're out there
3 early in the morning, you're gonna see him and he's gonna see
4 you, and that's why they had prior dealings. I don't know
5 what happened to cause a triggering event here, but it just
6 appears to me that perhaps the mental health issue is a factor
7 in what happened.

8 Your Honor, we would ask the Court to consider a minimum
9 sentence. I know the mandatory minimum in this case is 15
10 years. We would ask the Court to consider that the mandatory
11 minimum sentence. There's not much else that Your Honor could
12 do for him, but we'd just ask for any leniency the Court could
13 allow.

14 THE COURT: All right, sir. Thank you very much.

15 MR. GALMORE: Yes, sir.

16 THE COURT: All right. The defendant not appearing for
17 trial, the Court did issue a bench warrant for him in
18 accordance with the requirements of law. When the defendant
19 does not appear, the sentence must be sealed. It shall be
20 read to the defendant when he is picked up and the defense may
21 -- obviously, the defense may argue against the sentence at
22 the time the sentence is read to the defendant; and obviously,
23 the state will have the opportunity to respond to that. So,
24 the Court has issued a sentence in this matter. I am sealing
25 the sentence and we will leave it to the law enforcement

1 officers to affect the defendant's presence through the bench
2 warrant.

3 Thank you very much.

4 MR. GALMORE: Yes, sir. Thank you.

5 MR. DEBUSK: Your Honor, for the record, bench warrant
6 2020D2600100207 was issued for Mr. Outen's arrest.

7 THE COURT: Thank you very much.

8 **ADJOURNED - 4:00 P.M.**

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina v. Devin Lavar Outen, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on February 6, 2020, as reported by Grace Hurley.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.

Kay H. Richardson
Official Court Reporter

December 7, 2021.

1 State of South Carolina) **TRANSCRIPT OF RECORD**
2 COUNTY OF HORRY) CASE NO. : 2018-GS-26-6393
3 Sentencing

4 -----

5 October 13, 2021

6 **BEFORE:** The Honorable Steven H. John

7 -----

8 State of South Carolina,
9 Plaintiff,
10

11 vs.

12 Devin Lavar Outen,
13 Defendant.

14 -----

15 APPEARANCES:

16 George DeBusk, Esquire
17 For State.

18 Eric Fox, Esquire
19 For the Defendant.

20 Julie A. Kevish
21 Official Court Reporter

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P-R-O-C-E-E-D-I-N-G-S

MR. DEBUSK: Your Honor, for the record, this is indictment 2018-GS-26-6393, attempted burglary first. The defendant is Devin Outen. He was called to trial in his absence before Your Honor. The verdict was rendered of guilty on February 6, 2020. The sentence was sealed and this is a hearing to unseal that sentence.

THE COURT: So regarding this matter 2018-GS-26-6393, trial was commenced on February 5, 2020. The jury returned a verdict of February 6, 2020 guilty of the crime of attempted burglary of the first degree. The Court imposed sentence at that point in time. I sealed the sentence to be read to the defendant at the time that he was brought before the Court so we'll unseal that sentence at the present time.

Case Number 2018-GS-26-6393, State of South Carolina, County of Horry versus Devin Lavar Outen regarding the attempted burglary in the first degree, the jury having found you guilty of that crime sentence is: The defendant is committed to the State Department of Corrections for a term of term of 20 years. Mr. Fox, any arguments at this time?

MR. FOX: Your Honor, at this time I would renew all motions and objections that Mr. Outen's trial counsel, James Galmore made during the trial. We would renew each and every objection and motion and request a new trial.

THE COURT: Based on the Court's hearing of that

1 matter I'm going to respectfully decline to grant your motions
2 for new trial based on the record I did find and I do find that
3 there was sufficient evidence for the matter to go to the jury,
4 the jury having considered it, found him guilty of the crime
5 charged and I'm going to respectfully decline to grant your
6 motions. As to the sentence itself, do you wish to make any
7 arguments regarding the sentence imposed by the Court?

8 MR. FOX: Your Honor, in speaking with Mr. Galmore,
9 mother, he indicated that mitigation material was presented to
10 the Court at sentencing. I remind Your Honor that Mr. Outen,
11 one of the main concerns he had in appearing for court and
12 being sentenced was that he had been viciously assaulted in The
13 Department of Corrections before and had a very great fear of
14 going back. It wasn't just a black eye, he had a much more
15 serious situation, but that's sort of what led him to not show
16 up for his trial, and again, I think all mitigations were
17 presented by Mr. Galmore at the sentencing back in this 2020.

18 THE COURT: Alright, I appreciate that. Again,
19 having heard the matter, the potential sentence in this matter
20 could be from a minimum of 15 years up to life in prison. I
21 took all of the arguments of the State and the defense into
22 consideration at the time that the Court, though it was not
23 announced, I imposed the sentence of 20 years and I reaffirmed
24 that based upon all of the matters in the record and the
25 matters presented to the Court, the Court reaffirms that

1 sentence. Thank you very much.

2 MR. DEBUSK: Your Honor, at the time of sentencing a
3 bench warrant was issued to get the defendant's presence in
4 Court today. At this time since he has been sentenced we are
5 moving to lift that bench warrant.

6 THE COURT: I'll sign the order lifting the bench
7 warrant.

8 MR. DEBUSK: Thank you, Your Honor.

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CERTIFICATE

1 STATE OF SOUTH CAROLINA

2 COUNTY OF HORRY

3 I, Julie A. Kevish, Official Court Reporter for the
4 State of South Carolina, do hereby certify that the foregoing
5 is a true, accurate and complete Transcript of Record of the
6 proceedings had and evidence introduced in the Court of Common
7 Pleas for Horry County, South Carolina, on the 13th of June,
8 2021.

9 I do further certify that I am neither of kin,
10 counsel, nor interest to any party hereto.

11

12 October 13, 2021

13

14 _____
15 JULIE A. KEVISH
16 OFFICIAL COURT REPORTER

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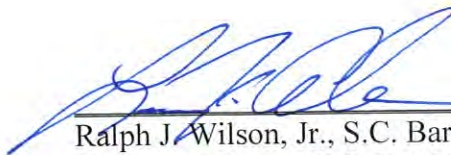
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State's Exhibit 4

Certificate of Counsel

The undersigned hereby certifies that the Amended Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

September 21, 2022



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SC Court of Appeals